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By Nathaniel Bacon

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Bacon, Nathaniel, 1593-1660

AN

HISTORICALL DISCOURSE

OF THE

UNIFORMITY OF THE GOVERNMENT OF

ENGLAND.

THE FIRST PART.

From the first Times till the Reign of

Edward the third.

LONDON,
Printed for *Matthew Walbancke* at Grays-Inn-Gate. 1647.

To Conſideration.

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A Private debate concerning the right of an Engliſh King to Arbitrary rule over Engliſh Subjects as Succeſſor to the Norman Conquerour, (ſo called) firſt occaſioned this Diſcourſe. Herein I have neceſſarily fall'n upon the Antiquity and Uniformity of the Government of this Nation: It being cleared may alſo ſerve as an Idea for them to conſider, who do mind the reſtitution of this ſhattered frame of policy. For as in all other cures, ſo in that of a diſtempered Government, the original conſtitution of the body is not lightly to be regarded; and the contemplation of the proportion of the manner of the Nation in a ſmall model brings no leſs furtherance to the right apprehenſion of the true Nature thereof (beſides the delight) than the peruſing of a Map doth to the Traveller after a long and tedious travel.

I propound not this Diſcourſe as a pattern drawn up to the life of the thing, nor the thing it ſelf as a Maſter-piece for future Ages; for well I do know, that Common-weals in their minority do want not only perfection of ſtrength and beauty, but alſo of parts and proportion; eſpecially ſeeing that their full age attaineth no further growth than to a mixture of divers forms in one. Ambition hath done much by

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diſcourſe and action to bring forth Monarchy out of the Womb of notion, but yet like that of the Philoſopher's ſtone the iſſue is but wind, and the end miſery to the undertakers: and therefore more than probable it is, that the utmoſt perfection of this nether worlds beſt Government conſiſts in the upholding of a due proportion of ſeveral intereſts compounded into one temperature.

He that knoweth the ſecrets of all Men's hearts, doth know that my aim in this Diſcourſe is neither at Scepter or Croſier, nor after popular dotage, but that Juſtice and Truth may moderate in all. This is a Veſſel I confeſs ill and weakly built, yet doth it adventure into the vaſt Ocean of your cenſures, Gentlemen, who are Antiquaries, Lawyers, and Hiſtorians, any one of whom might have ſteered in this courſe much better than my ſelf. Had my own credit been the fraight, I muſt have expected nothing leſs than wrack and loſs of all; but the main propoſe of this Voyage, being for diſcovery of the true nature of this Government to common view; I ſhall ever account your juſt cenſures, and contradictions (eſpecially publiſhed with their grounds) to be my moſt happy return, and as a Crown to this work. And that my labour hath its full reward, if others taking advantage by mine imperfections ſhall beautifie *England* with a more perfect and lively Character.

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PROLOGUE.

PROLOGUE.

THe policy of Engliſh Government, ſo far as is praiſe-worthy, is all one with Divine Providence, wrapped up in a vail of Kings, and wiſe men, and thus implicitely hath been delivered to the World by Hiſtorians; who for the moſt part do read Men, and wear their Pens in decyphering their perſons and conditions: ſome of whom, having met with ingenious Writers ſurvive themſelves, poſſibly more famous after death than before: Others after a miſerable Life waſted, are yet more miſerable in being little better than Tables to ſet forth the Painters workmanſhip, and to let the World know, that their Hiſtorians are more witty than themſelves, of whom they wrote were either wiſe

or

or good. And thus Hiſtory that ſhould be a witneſs of Truth and Time, becomes little better than a parable, or rather than a nonſence in a fair Character, whoſe beſt commendation is that its well written.

Doubtleſs, Hiſtories of Perſons, or Lives of Men, have their excellency in fruit, for imitation and continuance of Fame, as a reward of vertue: yet will not the concervation of theſe together declare the nature of a Common-Weal better, than the beauty of a body diſmembred is revived by thruſting together the members, which cannot be without deformity. Nor will it be denyed but many wiſe and good Kings and Queens of this Realm may juſtly challenge the honour of paſſing many excellent Laws, (albeit it's the proper work of the repreſentative body to form them) yet to no one, nor all of them, can we attribute the honour of that Wiſdom and Goodneſs that conſtituted this bleſſed Frame of Government; for ſeldom is it ſeen that one Prince buildeth upon the foundation of his Predeceſſour, or purſueth his ends or aims; becauſe as ſeveral Men they have ſeveral judgements and deſires, and are ſubject to a Royal kind of ſelf-

ſelf-love, that inciteth them either to exceed former precedents, or at leaſt to differ from them, that they may not ſeem to rule by Copy, as inſufficient of themſelves; which is a kind of diſparagement to ſuch as are above. Add hereunto, that it's not to be conceited that the wiſeſt of our Anceſtors ſaw the Idea of this Government; nor was it any where in precedent but in him that determined the ſame from Eternity: for as no Nation can ſhew more variety and inconſtancy in the Government of Princes than this, eſpecially for three hundred years next enſuing the Normans: ſo reaſon cannot move imagination that theſe wheels, by divers, if not contrary motions, could ever conſpire into this temperature of policy, were there not ſome primum mobile *that hath ever kept one conſtant motion in all.*

My aim therefore ſhall be to lay aſide the conſideration of Man as much as may be, and to extract a ſummary view of the cardinal paſſes of the Government of this Kingdom, and to glance at various Aſpects of the ancient upon the modern, that ſo theſe divers Princes, and wiſe Councils in their different courſe may appear

pear to be no other than the instruments of him that is but one, and of one mind, whose goings forth have been in a continual course of Wisdom and goodness for our selves in these latter days: and herein I am encouraged because I am not in danger of temptation to flattery or spleen, nor pinched with penury of grounds of observation; having to do with a Nation, than which a clearer mirour of God's gracious Government is not to be found amongst all the Nations and Peoples under Heaven.

Of

An Hiſtorical Diſcourſe Of the uniform Government of *ENGLAND.*

CHAP. I.

Of the Britons, and their Government.

THis is *Britain*, or rather that part thereof in after ages called *Saxony* and *England*, from the peoples names tranſplanted thither. The *Britons* (to lay aſide all conceipts of Fame) I take to be an iſſue of the neighbouring Nations from the German and Belgick ſhores; induced hereto partly by the vicinity of the names of the Peoples, Cities, or Towns, and places, but more of their manners and cuſtomes, both in Religion and civil Government. *Barbarians* they were, and ſo eſteemed by the *Romans* that were but refined *Barbarians* themſelves; and yet they worſhipped an Inviſible, Infinite, Omnipotent God by Sacrifices: but the greateſt part of their reverence fell ſhort, and reſted upon their Prieſts, whom they accounted the onely Secretaries that God had on earth, feared their interdict worſe than death it ſelf, and (in theſe times of uttermoſt darkneſs) held them forth to neighbouring Nations,

Cæſ. com. lib. 5.

Tacit. Anal. 14.

Amian lib. 15.

Cæſ. com lib. 6.

Tacit.

to instruct them into an higher excellency than that of brutish men.

In their civil Government they allowed preeminence of their Magistrates rather than Supremacy, and had many chiefes in a little room; the *Romans* called them little Kings, for the greater renown of their Empire: but others of more sobriety account
Cæs.com.lib.5. them no better than Lords. Of liberties not much exceeding those of a City; and these (though in time of peace independant upon each other, yea perpetual Enemies, yet) in time of forraine war, joyned together to chuse one head to command them all,
Lib. 6. according to the custome of the *Germans*, as *Cæsar* noteth. But that which yet cleareth the matter, is the testimony of *Dion* in the life of *Severus* the Emperour, who expresly saith, that in *Britain*, the people held the helm of Government in their own power, so as these were not Kings, nor their government Monarchical, and yet might be regular enough, considering the rudeness that in those daies overspread the World. True it is that by a holy man this Nation was in latter times of Barbarisme
Hieron. called *Tyrannorum gens*, the word being taken *mitiori sensu*, or from a common repute of excessive cruelty, or oppression by superiours. As touching their cruelty, I find no footsteps in story: somewhat reflecteth upon their Sacrifices, as if they offered mans
Cæs.cor. 6. flesh; but that was common to the *Gauls*, who borrowed their Religion from *Britain*; and it might be founded rather upon an errour in judgment, than savageness of nature. Much less cause doth appear of any cry of oppression upon inferiours, but rather against that; as the multitude of Kings or Lords do manifestly witness, who being observed in the time of *Julius Cæsar* continued in *Tiberius* his time and afterwards, until in the reign of *Claudius* 'tis said that *Caractacus* ruled over many Nations: for its a certain maxime, that though great Nations may be upholden by power, small Territories must be maintained by justice; without which, the door will be soon set open to the next passenger that comes, especially where the people are bent to war as these were, and therein had attained such exquisite perfection of skill in Chariot service, as must needs convince us of their much experience against themselves, in regard that to other people it was scarce known; no, nor yet to *Cæsar* himself, that had been

been practiſed in the wars of all Nations. And this is all that I can produce out of ſtory, touching the government of *Britain*, before the entry of that light that lightneth every one that cometh into the world.

CHAP. II.

Concerning the converſion of the Britons *unto the Faith.*

IT was long before the Son of God was inwombed, & whiles as yet Providence ſeemed to cloſe onely with the Jewiſh Nation, and to hover over it, as a choice picked place from all the earth, that with a gracious eye ſurveying the forſaken condition of other Nations, it glanced upon this Iſland; both thoughts and words reflected on Iſles, Iſles of the Gentiles, Iſles afar off, as if amongſt them the Lord of all the earth had found out one place that ſhould be to him as the Gemme of the ring of this Terreſtrial Globe: and if the waies of future providence may be looked upon as a gloſs of thoſe Propheſies, we muſt confeſs that this Iſland was conceived in the womb thereof, long before it was manifeſted to the world. Iſa. 42. 4. 51. 5. 60. 9. 66. 19.

To recover the forgotten waies of paſt providence, is no leſs difficult, than to ſearch out the hidden bowels of future promiſes; and therefore I ſhall not buſie my ſelf to find out the particular inſtruments that brought Gods preſence into this dark corner; but only glance at the time and manner, that it may appear we were not forgotten, nor yet loſt, or leaſt in mind, at that time of the diſpenſation of this grace unto all men. I dare not inſtance as *Gildas*, the certain time of ſix years; yet I may ſay, that no ſooner was the Scepter departed from *Judah*, but with a ſwift pace, both it and the Law-giver came hither like an Arrow flying through other Countries, but ſticking with a *ne plus ultra* in this Iſland (then a People rather than a Common-weal) as if we were the only white that then was in Gods aime. Its probable in the higheſt degree that the work was done within the firſt Century, and very nigh about the Apoſtolick times; for that in the ſecond Century, *Britain* was a

Church of Fame, and known to the Fathers that dwelt afar off, even to *Tertullian* and *Origen*, and in short time had outreached the Roman confines in that Island (which had cost them above two hundred years Travaile) and was grown to the state of the first Christian Kingdom that ever was: unto which, if we shall allow time for the gathering and growth thereof unto this royal pitch, proportionable to the half of that which afterward was spent in the like work, upon the Saxon and Danish Kings, we must in reason conclude that the work was first ordered by Apostolical direction, or some of their Emissaries. Customs also do not obscurely declare ages. For before that *Pius*, Bishop of *Rome*, began to speak in the big language of Decrees, it was indifferent to keep *Easter* either upon the day observed by the Roman Church, or on the day according to the Jews custom; and although the Roman Church began within fifty years after the death of *John* the Evangelist, to stickle to impose their custome upon other Churches; yet the Church of *Britain* conformed not to that course by the space of five hundred years after that time; which reflecteth probability, that the Church was there setled in times of indifferency, not by Roman order, but by some other purposed messenger.

Tertul. adv. Judæos.

Platina. de vit. Eleuthe.

Beda. l. 5. cap. 25.

The manner yet is more remarkable, for that not only Principalities and Powers, and Spiritual wickednesses in high places (which are but stumbling-blocks) but also natural wisdom of the Druides, who were masters of the consciences of the *Britons*, and their high conceipt of their excellency above the ordinary strain of men, and unto which the Cross of Christ is meer foolishness; and above all, the deep obligement of the people unto these their Rabbies, in a devotion beyond the reach of other Nations; all these, I say, stood in the way, and rendred the people more uncapable of any new light. But when the time fore-set is fully come, all mountains are laid low, and double-folded doores fly open; and this Conquerour of all Nations attempts *Britain* not in the rear, nor by undermining, but assailes them in their full strength, presents in a clear Sun-shine that one true Sacrifice of God man; at the appearing whereof, their shadows of many Sacrifices of mans flesh flie away. And thus

thus, thoſe Druides that formerly had dominion of the *Britons* faith, become now to be helpers of their joy, and are become the leaders of the blind people in a better way, and unto a better hope; and held forth that light which through Gods mercy hath continued in this Iſland ever ſince, through many ſtorms and dark miſts of time, until the preſent Noon-day. Origen. hom. 4. Ezek.

CHAP. III.

Of the entry of the Romans *into* Britain, *and the ſtate thereof during their continuance.*

THis converſion of the Druides was but the firſt ſtep to that which followed; for the Decree was more full of grace than to make this Iſle to be only as an Inn for him to whom it was formerly given for a poſſeſſion; The Romans are called in to the work, under whoſe Iron yoke, God had ſubdued all Nations, thereby more ſpeedily to bring to paſs his own conqueſt, both of that one head, and all its members. The firſt *Cæſar* had entred *Britain* before the Incarnation, and having ſeen and ſaluted it, and played his prize, returned with the fame only of conqueſt of ſome few Lordſhips neighbouring to the Belgick ſhore; and ſo it continued correſpondent to the *Romans*, or rather forgotten of them till the time of *Claudius* the Emperour; who being at leiſure to bethink him of the *Britons* tribute, or rather aſpiring to honour by a way formerly untroden by his Anceſtors, firſt ſetled Colonies in *Britain*, and brought it into the form of a Province, and ingaged his ſucceſſors in a continual war to perfect that work, which outwearied their ſtrength at laſt, and made them foregoe the prey, as too heavy for the Eagle to truſs and carry away. Pl. 2. 3. Tacit. Vit. Agric.

It oft befals, that things of deformed ſhape are nevertheleſs of excellent ſpirit, and ſerve the turn beſt of all: and it is no leſs remarkable, that this tide of Roman invaſion, however it repreſented to the world little other than a tumour of vainglory in the *Romans*, that muſt needs be fatal to the *Britons* liberty

liberty and welfare: yet by over-ruling providence it conduced so much to the *Britons* future glory, as it must be acknowledged one of the chief master-pieces of supernatural moderatorship that ever this poor Island met with. First, it taught them to bear the yoke, to stoop, and become tractable; for stubborn spirits must first stoop under power, before they will stoop to instruction; but this only in the way; for tractableness, if good ensue not, is of it self but a disposition for evil. Secondly, it brought into *Britain* the knowledge of Arts and civility; and questionless it was a wise policy of *Agricola*, to go that way to work; for its an easie and Royal work to govern wise men, but to govern fools or mad-men, is a continual slavery; and thus Religion already setled in *Britain*, became honoured with a train of Attendants and Handmaids. Thirdly, they reduced the number of little Lordships nigher to the more honourable estate of Monarchy: for the *Romans*, by dear experience, finding no stability or assurance in what they had gotten, so long as so many petty Kings had the rule; they wisely brought the whole into one Province (because it is much easier to govern many subordinate each to other, than co-ordinate one with another) over which they allowed one chief, to rule the people according to their own Laws, saving their service to the *Romans* and their Lieutenants, until they were necessitated to yield up all to the next occupant: This served the British Church with a double interest. The first, Religion spreads sooner under one uniform government, than under variety; and under Monarchy, rightly ordered, rather than any other government whatsoever; albeit that other governments may afford it faster footing when it is entred. Secondly, *Rome* was a renowned Church throughout the world for gifts and graces; and it is obvious to conceive that it was specially purposed by divine providence to make that place a Fountain, that from thence the knowledg of Christ might convey it self joyfully with the influence of Imperial power, as the spirits with the blood, into all Nations of that vast body.

Tacit. vit. Agric.

Above one hundred years were spent in this Provincial way of government of *Britain*, under the Roman Lieutenants; during all which time, Religion spread under ground, whiles the

the Roman power in a continual war ſprang upward: Nor is it ſtrange that Religion ſhould thrive in war; the French wars in *Edward* the Thirds time brought much of this happineſs to *England* from the *Waldenſes*; and *Germany* had no leſs benefit by the wars of *Charles* the Fifth with the *Italians*, *French*, and *Turks*: and thus the *Romans* levened with the Goſpel, by exchanging men with *Britain*, and other mutual correſpondencies inſinuated that leven by degrees, which in the concluſion prevailed over all.

For the Roman Lieutenans having gotten ſure footing in *Britain*, ſteered their courſe with a different hand; generally they were of the Roman ſtamp, ſeeking to kill Chriſt in the Cradle; and by that means Religion met with many bitter ſtorms of bitter perſecution, and ſo was compelled to bear a low ſail; but ſome being more debonaire, and of wiſer obſervation, ſoon found, that the way of juſtice and gentleneſs had more Force in *Britaine* than Arms, and ſo endeavoured to maintain that by moderation which they had gotten by labour and blood (as it is ever ſeen that where conqueſt is in the van, gentleneſs follows in the rear, becauſe no Bow can ſtand long bent, but at length muſt give in and grow weak.) And thus by connivance, the *Britons* got a little more ſcope, and Religion more encouragement, till it became acquainted with the Roman Deputies, began to treat with the Emperours themſelves, and under the wiſe government of *Aurelius*, the Emperour mounting into the Britiſh Throne, Crowned *Lucius* firſt of all Kings with the Royal Title of a Chriſtian.

He now not ſo much a Vaſſal as a Friend, and Ally to the *Romans*, and perceiving the Empire to be paſt noon, and their Lieutenants to comply with the Chriſtians, began to provide for future Generations, and according to the two grand defects of Religion and Juſtice, applied himſelf for the eſtabliſhment of both.

Religion in *Britain* hath hitherto been for the moſt part maintained by immediate influence from Heaven. No Schools, no Learning, either maintained or deſired; the want whereof, together with the perſecutions ſtirred up by the Emperours, eſpecially *Domitian*, brought the Church to ſo low an ebb, that the

the Sacraments ceaſed, for Hiſtories tell us that *Lucius* ſent to *Rome* for relief; and that the Biſhop of that place (whether *Evariſtus* or *Eleutherius*) ſent over Learned men to Preach and Baptize both King and People; and in this, *Rome might* probably gain ſome Honour, although poſſibly the King intended it not, or much leſs to acknowledg any Authority or Power in that Church, over that of *Britain*. This act of *Lucius* ſo advanced him in the opinion of Writers, that they know not when they have ſaid enough: Some will have him to be the inſtrument of the firſt entry of Religion into this Iſle: others, that he ſetled a form of Church-government under the three Archbiſhops of *London*, *York*, and *Caerlion* upon *Vske*, and 28 Biſhopricks; the firſt of which is cried down by many demonſtrative inſtances, nor can it conſiſt with the ſecond, nor that with it, or with the truth of other ſtories. For it neither can be made out that *Lucius* had that large circuit within his Dominion, nor that the title of Archbiſhop was in his daies known; and 'tis very improbable that the Britiſh Church was ſo numerous, or that Religion in his time was over-ſpread the whole Iſland: nor is there any mention in any Author of any Monuments of theſe Archbiſhops, or Biſhops of *Britain*, for the ſpace of 200. years after this Kings reign, and yet no continual raging perſecution (that we read of) that ſhould enforce them to obſcure their profeſſion, or hide their heads: or if ſuch times had been, it would have been expected that Biſhops in thoſe daies ſhould be in *Britain* (as well as in other places) moſt famous for gifts and graces, and paſs in the forefront of perſecution. But we find no ſuch thing; no not in the rages of *Diocleſian*, which made the Britiſh Church famous for Martyrs: Writers ſpeak of *Alban*, *Amphibalus*, *Aron*, *Julius*, and a multitude of Lay-people, but do not mention one Biſhop, nor Presbyter, nor other Clergy-man, but *quendam Clericum*, a man it ſeems of no note, and of unknown name. In Charity therefore the Engliſh Church in thoſe daies muſt be of mean repute for outward pomp; and not lifted up to that height of Archbiſhops, when as *Rome* it ſelf was content with a Biſhop.

M. Weſtm. an. 181.

M. Weſtm. an. 303.

Somewhat more probable it is, that is noted by Writers concerning *Lucius* his endeavour to ſettle the Common-wealth, and

and good Laws for government, and to that end did write a Letter to *Eleutherius*, Bishop of *Rome*, for a model of the Roman Laws; probably being induced thereunto by the splendor of the state of the Roman Church and Common-weal; the only favourite of fame in those times through the Northern parts of the World. Things afar off I confess are dim, and its meet that Antiquaries should have the honour due to great after-sight. And therefore I might think (as some of them have done) that the Epistle of *Eleutherius* to King *Lucius* is spurious, if I could imagine to what end any man should hazard his wits upon such a fiction; or if the incongruities charged against it were incurable; but being allowed to be first written in Latine, and then translated into British for the peoples satisfaction; and in that Language (the original being lost) traduced to posterity; and then by some Latine Writer in after ages, returned into Latine, and so derived to these times (all which very probably hath been) such occasions of exceptions might well arise by mistake of translators and transcribers in ignorant times, and the substance nevertheless remain entire and true. Considering therefore that the matter of that Epistle savoureth of the purer times of the Church, and so contrary to the dregs of *Romulus*, I mean, the policy, practice, and language of the Roman Clergy, in these latter ages, wherein this forgery (if so it be) was made; I must allow it to pass for currant for the substance, not justifying the syllabical writing thereof. Cic. Attic. 2.

To others it seemeth needless and vain, that *Lucius* should send for a model to *Eleutherius*, when as the Roman Deputies and Legions at home might have satisfied the Kings desire in that particular, or their own experience might have taught them grounds sufficient, after two hundred years converse with the *Romans*, that they should have little needed a model for that which they saw continually before their view, or might have understood by inquiry of their own acquaintance. But what could be expected of rough Souldiers, concerning form of government of a Common-weal? or if some exceeded the ordinary strain in policy, yet they were too wise to communicate such Pearls to conquered Nations, that ought to look no higher than the will of the Conquerour, and subsist in no better

condition than may be controlled by the Supream Imperial Law of the Lord *Paramount:* or if in this they had correſponded to the deſires of the *Britains*, yet being for the moſt part ignorant of the main, they could never have ſatisfied the expectations of a Chriſtian King, who deſires ſuch a Law as may befriend Religion, and wherein no man was more like to give direction than *Eleutherius*; who ſeeing a kind of enmity between the Roman Laws, and Chriſts Kingdom, ſends to the King a fair refuſal of his requeſt upon this ground, that *leges Romanas & Cæſaris ſemper reprobare poſſumus*; he ſaw that they were not well grounded; he therefore refers the King to the ſacred Scripture, that is truth it ſelf. Laws that come nigheſt to it are moſt conſtant, and make the Government more eaſie for the Magiſtrate, quiet for the people, and delightful to all; becauſe mens minds are ſetled in expectation of future events in Government, according to the preſent rule; and changes in courſe of Government, are looked at as uncouth motions of the Celeſtial bodies, portending judgements or diſſolution. This was the way of humane wiſdom; but God had an eye on all this, beyond all reach of pre-conceipt of man, which was to make *England* happy in the enjoying of a better Law and Government than *Rome*, how glorious ſoever then it was; and to deliver that Iſland from the common danger of the world; for had we once come under the Law of the firſt Beaſt, as we were under his power; we had been in danger of being born Slaves under the Law of the ſecond Beaſt, as other Nations were, who cannot ſhake it off to this day.

But *Lucius* lived not to effect this work; it was much delayed by the evil of the times; nothing was more changeable than the Empire; [illegible]; the Emperours, many of them ſo vitious, as they were a burden to man-kind; nor could they endure any Deputy or Lieutenant that were of better fame than themſelves had. Some of them minded the affaires of the Eaſt, others of the North; none of them were *ad omnia:* And the Lieutenants in *Britain*, either too good for their Emperour, and ſo were ſoon removed; or too bad for the people of the Land, and never ſuffered to reſt free from tumults and inſurrections: neither *Lucius* could prevail, nor any of his ſucceſ-

ſors.

sors. But passing through continual cross flouds of persecutions, under *Maximinus*, *Diocleſian*, and *Maximinianus* and many civil broiles, till the times of *Conſtantine*, at length it attained the haven.

For *Conſtantine* having overcome *Maxentius*, and gotten thereby into the higheſt Orb of Government in the Empire, reflected ſuch an amiable aſpect upon the Churches, eſpecially in *Britain*, as if he had intended to pay to them all that God had lent him. A wiſe Prince he was queſtionleſs; yet towards the Church ſhewed more affection; endeavouring to reduce the Government in every place unto the Roman Prototype, and therein added much honour to that See, eſpecially to Pope *Sylveſter*, whoſe Scholar he had been. This may ſeem a ſufficient inducement to perſwade, that he was the firſt Patron of Engliſh Prelacy, ſeeing we find it in no approved teſtimony before that time; nor was it long after, when as the preſence of the Britiſh Biſhops are found at the Synod by him called at *Arles*, viz. the Biſhops (not Archbiſhops) of *London* and *York*, and the Biſhop of *Maldune*; and thoſe in no great pomp, if the relation be true, that by reaſon of their poverty they were not able to undergoe the charge of their journey and attendance, ſo as it ſeems they had but new ſet up, and had not yet found out the right way of trade that the Biſhops had attained. And thus God ordered firſt the ſetling of a Government of the Church in *Britain*, and its Liberties, before the Secular part enjoyed any: therein working with this Nation, as with a man, making him to be *bonus homo* before he can be *bonus civis*. Concil. Brit. 42.

The Church of *Britain* thus ſet together, is wound up for motion; they ſoon learned the uſe of Synods, from that Synod at *Arles*, if they had it not before; and took as much power to themſelves in their Synods, as in other Countries were uſed, and ſomewhat more to boot. For they had the hap to continue in *Britain* in free courſe, a full century of years before the civil Magiſtrate had any other power, but what was wrapped up under the allowance of their Roman Maſters, who like *Gallio*, looked upon the Church-affaires as out of their Sphear, and therefore cared for none of thoſe things; or if the zeal of any See far prevailed, it was much in favour of the Biſhops, upon

whom the Emperours began to dote as Oracles; and this raised the price of the Clergy, and taught them the way to fish for themselves: No wonder it is therefore if Synods in *Britain*, or rather the Clergy in the Synods (which probably were then the representative body of the Nation) swayed all that was free from the Roman Magistracy, and in some things out-reached their limits; especially during the interim wherein the *Romans* held the arms of civil Magistracy bound, and let the Clergy have their scope, that soon began to be ambient, and conceipt a new Idea of deportment, like that of the second beast in its infancy: Nor did the *Britons* espy their danger herein, for they had been used to idolize their Druides; and it was no more but faces about, to do as much for their Bishops. Of this power of Synods I shall propound but three presidents, and so draw to a conclusion of what I think meet to note concerning the British affairs. I suppose it will not be doubted, but that publique consultations concerning the publique government of any place or Nation, ought not to be called but by the Supream power; and that such consultations are to be directed by that Supream power. The *Britons* had a King, and yet without his consent they call a Synod against the Pelagian Heresie, and chuse a Moderator from beyond the Sea, and by that Synod not only overwhelmed the Heresie, but excommunicated their King. This was a National Synod, and might well stand with the rule of State, which then had seated the Supream power in the people, as I formerly noted out of *Dion*. But it could be no warrant for that which followed, *viz.* that a Country Synod should excommunicate a King, as it befell in the cases of *Moris* and *Morcant*. Or that such a Synod should intermeddle in matters of *meum* and *tuum*, as in the case of *Loumack*, who having invaded the patrimony of the Church, the Bishop of *Landaff*, in a Synod of his Clergy enjoyned him penance; and the like befel unto *Brockvaile*, who was compelled by the Synod to make amends to *Civiliack* Bishop of *Landaff*, for injury to him done: which I note not by way of imputation; for this exorbitancy (if so it were) might correspond with these times, wherein very probable it is, that justice could not be had elsewhere; and had the Clergy been as careful of Holiness,

M. Westm. An 446. Beda. Lib. 1. cap. 17.

Concil. Brit. p. 49, 62, 382.

Concil. Brit. 385.

Holineſs, as in the former caſes they ſeem jealous for juſtice, *Britain* muſt have had the repute of a Nation of Prieſts and Holy men, rather than of Tyrants: whereas it was become a glut of wickedneſs, and a burden that God would endure no longer; which rendreth their Synod lyable to exception, as being ſuch as were either lifted up, or drawn aſide, and as the Liſt to the Cloath, ſheweth that the Nation ſtood in need of that inſtruction which with a ſtrong hand God wrought into them by the ſad Calamity which enſueth. Gildas.

CHAP IV.

Of the entry of the Saxons, and their manner of Government.

WAſted with time, and wounded by eternal doom, the glory of the Weſtern Empire going down apace, now draweth nigh unto its everlaſting night: and that vaſt body (not able longer to ſubſiſt, but dying by degrees) abandons this Iſle of *Britain* its utmoſt limit, and laſt inlivened to ſubſiſt alone miſerably, or elſe to die. The choice was more difficult by how much the more *England* was much waſted in the Roman wars, the flower of their ſtrength ſpent in forraign ſervice, the remainder but few, and theſe exceeding vicious, and which was worſt of all, ingaged by the *Romans* in a war with the Picts, againſt whom the Romans themſelves found it too burdenſome for them to hold out, without the help of a wall: and albeit that the very name of an old Servant of four hundred years continuance, might have moved a *Roman* heart to commiſeration, yet their ſpirits fail, and forſaken *England* muſt now go into the Wilderneſs, and naked as they are, endure the brunt of the cold ſtorms of the Northern Picts, without any ſhelter but the hidden will of God then frowning upon them. In this condition, they half deſperate, ſeek for a cure in reaſon worſe than the diſeaſe. For it had been better for them to have ſtooped to hard conditions with the Picts, conſidering they were all

all but one people, and differing only by the breadth of a wall, than to call in a new people whose qualities they were ignorant of, and at the best to make them their companions, who might prove (as they afterwards did) both Lords and Masters over them. But there is no reason against God's will. The *Britons* needed present help, they overlai'd by invasions from the Picts (who soon espied the *Romans* gone, and their own advantage) sent for aid where they were most like to speed for the present, and left the future to look to it self. *Ireland* was nigh, but we find nothing concerning their interest in shipping; the French coasts were not their own men, being yet within the Roman Line: and none were at liberty, but such as were never subdued by the Romans: Only the *Saxons* are in the thoughts of the *Britons*, a mighty people not far off, able to mate the *Romans* in their chiefest pride, and though in a manner borderers upon the Roman world, yet unsubdued by them, used to the wars, mighty at Sea; and now given over by the *Romans* in a plain field, were at leisure, and so well knew the way to *Britain*, that the *Romans* intituled the coasts of *Norfolk* and *Suffolk* the *Saxons* Coasts, from the many visits that the *Saxons* had already made into those parts, full sore against the *Romans* wills.

Amman. l. 16.

Zosimus hist. lib. 3.

Amian. lib. 28. 30.

I hold it both needless and fruitless to enter into the Lists concerning the original of the *Saxons*; whether they were Natives from the Northern parts of *Germany*, or the reliques of the *Macedonian* Army under *Alexander*. But it seems their government about the time of *Tiberius* was in the general so suitable to the *Græcians*, as if not by the reliques of *Alexanders* Army (which is generally agreed, emptied it self into the North) yet by the Neighbourhood of *Greece* unto these Nations, it cannot be imagined, but much of the Græcian wisdom was derived into those parts, long before the *Romans* glory was mounted up to the full pitch: and because this wisdom could never be thus imported, but in vessels of mans flesh, rigged according to the *Grecian* guize, it may be well supposed that there is some consanguinity between the *Saxons* and the *Grecians*, although the degrees be not known. The people were a free people, governed by Laws, and those made not after the manner of the *Gauls* (as *Cæsar* noteth) by the great men, but by the people; and there-

Suffrid. Petrus Frif. antiquit. lib. 3. cap. 1.

Cæs. Com.

therefore called a free people, becauſe they are a Law to themſelves; and this was a priviledg belonging to all the *Germans*, as *Tacitus* obſerveth, in caſes of moſt publique conſequence (*de majoribus omnes*) like unto the manner both of the *Athenians* and *Lacedemonians* in their *Concio*. For which cauſe alſo I take the *Gauls* to be ſtrangers in blood unto the *Britons*, however nigh they were in habitation. That ſome matters of action (eſpecially concerning the publique ſafety) were by that general vote concluded and ordered, ſeems probably by their manner of meeting with their weapons. But ſuch matters as were of leſs concernment, the Councel of Lords determined *de minoribus Principes*, ſaith the ſame Author. Their Country they divided into Counties or Circuits, all under the government of twelve Lords, like the Athenian territory under the *Archontes*. Theſe (with the other Princes) had the judicatory power of diſtributive juſtice committed to them, together with one hundred of the Commons out of each diviſion. The Election of theſe Princes with their Commiſſion, was concluded *inter majora* by the general Aſſembly; and they executed their Commiſſion in Circuits, like unto the *Athenian* Heliaſtick or Subdial Court, which was rural, and for the moſt part kept in the open aire; in brief, their judicials were very ſuitable to the *Athenian*, but their military more like the *Lacedemonian*, whom above all others in their manners, they moſt reſembled. In their Religion they were very devout, ſaving that they much reſted in the reverence they bare to their Prieſts, whom they made the moderator of their general Aſſembly, their Judge, Advocate, and Executioner in Martial Law; therein ſubmitting to them as unto Gods inſtrument. They worſhip an inviſible and an infinite Diety: mans fleſh is their Sacrifice of higheſt account: and as often as they make inquiry by lots, they do it with that ſolemn reverence as may put all the Chriſtian world to the bluſh, *precatus Deos, cœlumque ſuſpiciens*; and this done by the Prieſt of the Town (if it be in publique cauſes,) or otherwiſe, if private, then by the Maſter of the Family; ſo as they had Family-worſhip as well as publique. Theſe things I note, that it may appear how nigh theſe invited gueſts reſemble the old Religion of the *Britons*, and how probable it is, that this Iſland hath

Hiſtor. Germ. Plutarch. vit. Solon. & Lycurg.

Albinus. Sax. 72.

Xenophon.

Tacit.

Emius.

Avent. Anal. Bowr. 1. 10. Beuter. in Tac. t. 115.

hath from time to time been no other than as a Sewer to empty the superfluity of the German Nations; and how the influence of these old principles doth work in the fundamental government of this Kingdom, to this present day. These are the instruments chosen by God, and called by the *Britains* to be their deliverers from their Enemies; which they did indeed, yet not swayed thereto by love of justice or compassion; for (if writers say true) they were no better than high-way men both by Sea and Land, but by their love of spoil and prey, and by the displeasure of God against a dissolute people. They profess friendship nevertheless in their first entrance; but espying the weakness of the *Britons*, and feeling the strength of the Picts, and finding the Land large and good, they soon pickt quarrels with their Hoast, made peace with the Picts, and of fained Friends, becoming unfained Foes to the *Britons*, scattered a poor remnant of Christians, some to the furthest corners of the Kingdom, others into forrain Nations, like so many Seeds-men, to sow the precious Seed of Life in a savage soil. And those few that remained behind, profiting under much misery, by their doctrine and good example yielded better blessings unto their new-come guests than they either expected or desired. And thus the miseries of poor *Britain* became riches of mercy to the North and Eastern people; and the ruines here, the foundations of many famous Churches else-where. Nor yet was mercy from the *Britons* utterly taken away, nor their blood drawn out to the last drop; or their name quite blotted out of the book of fame: for whereas two things make men miserable, *viz.* the heavines of the burden without, and the failing of the heart within, and Gods ordinary way of redress of the former beginneth in taking away the latter; thus dealt he with the *Britons*; for in danger, as want of strength breeds fear, and that (by extremity) despair, so despair oftentimes revives into a kind of rage that puts strength forth beyond reason; I say beyond reason, for cause cannot be given thereof, other than Gods extraordinary dispensation in a judiciary way, when he seeth the stronger to wax insolent over the weaker. Thus the *Britons* fled from the *Picts* so long as they had any hope of relief from the *Saxons*; but being become their Enemies, and pursuing them

Amian.

them to the low-water mark, that in all reaſon they muſt either drink or bleed their laſt; then their courage revived, and by divers Victories, by the ſpace of 200. years, God ſtopped the haſty Conqueſt of the *Saxons*: the reſult whereof by truces, leagues, commerce, converſation, and marriages between theſe two Nations, declared plainly that it was too late for the *Saxons* to get all, their bounds being predetermined by God, and thus declared to the world. In all which, God (taming the *Britons* pride by the *Saxons* power, and diſcovering the *Saxons* darkneſs by the *Britons* light) made himſelf Lord over both peoples in the concluſion.

CHAP. V.

Of Auſtins *coming to the* Saxons *in* England, *his entertainment, and work.*

During theſe troubleſome times, came a third party that wrought more trouble to this Iſle than either *Pict* or *Saxon*, for it troubled all. This was the Canonical power of the Roman Biſhop, now called the Univerſal Biſhop. For the Roman Empire having removed the Imperial reſidence to *Conſtantinople*, weakned the Weſtern part of the Empire, and expoſed it not only to the forrain invaſions of the *Goths*, *Vandals*, *Herules*, *Lombards*, and other flotes of people, that about theſe times, by ſecret inſtinct were weary of their own dwellings, but alſo to the riſing power of the Biſhop of *Rome*, and purpoſely for his advancement; who by patience out-rode the ſtorms of forrain force, and took advantage of thoſe publick calamitous times to inſinuate deeper into the Conſciences of diſtreſſed people, that knew no other conſolation in a plundred eſtate, but from God and the Biſhop, who was the chief in account amongſt them; the beauty of the Biſhop of *Rome* thus growing in the Weſt, made him to out-reach not only his own Dioceſs and Province, but to mind a kind of Eccleſiaſtical Naucler. ſæc.

Empire, and a title according thereunto; which at length he attained from an Emperor fitted for his turn; and that was enough to make him pass for currant in the Empire. But *Britain* was forsaken by the Roman Empire above 153. years before: so as, though the Emperour could prefer his Chaplains power or honour as far as his own, which was to the French shore: yet *Britain* was in another world, under the *Saxons* power, and not worth looking after till the plundering was over, and the Saxon affairs setled; so as some fat may be had; then an instrument is sought after for the work, and none is found so far fit to wind the *Saxon* up to the *Roman* bent as a Monk, that was a holy humble man in the opinion of all, but of those that were so in the truth, and knew him. This is *Austin*, sent by Pope *Gregory* to do a work that would not be publickly owned; it was pretended to bring Religion to the *Saxons* in *England*; therefore they give him the title of the Saxon Apostle; but to be plain, it was to bring in a Church-policy, with a kind of worship that rendred the *Latria* to God, and the *Dulia* to *Rome*. The *Saxons* were not wholly destitute of Religion, and that *Gregory* himself, in his Letter to *Brunchilda*, the French Queen, confesseth: *Indicamus*, saith he, *ad nos perveniſſe Eccleſiam Anglicanam velle fieri Chriſtianam*; so as there was a good disposition to Religion before ever *Austin* came, and such an one as rang loud to *Rome*. But far more evident is it from the Saxons keeping of Easter *more Asiatico*, which custom also continued after *Austins* coming fifty years, sore against *Austins* will: the dispute between *Coleman* and *Wilfride* bears witness to that: and it had been a miraculous ignorance or hardness, had the *Saxons* a people ordained for mercy (as the sequel shewed) conversed with the Christian *Britains* and *Picts* above 150. years, without all touch of their Religion. If we then take *Austin* in his best colour, he might be said to bring Religion to the South-Saxons, after the Roman garbe; and his hotest disputes about *Easter*, *Tonsure*, the *Roman* supremacy, and his own Legatine power, and his worthy Queries to the Pope, shew he regarded more the fashion than the thing; and the fashion of his person more than the work he pretended; for he loved state, and to be somewhat like to the

Greg. Epist. lib. 5. Epist. 59.

Bed hist. lib. 3. cap. 25.

Bed. hist. lib. 1. cap. 23. Lib. 3. cap. 4.

Bed. hist. lib. 1. cap 27. Lib. 2. cap. 2.

the Legate of an Universal Bishop; and therefore of a Monk he suddenly becomes a Bishop in *Germany*, before ever he had a Diocess, or saw *England*; and after he perceived that his work was like to thrive, he returned and was made Archbishop of the *Saxons*, before any other Bishops were amongst them; and after three years had the Pall, with title of Supremacy over the British Bishops that never submitted to him.

Greg. Epist. l. 7 Epist. 13.

Concil. Erit. 92.

Bed. hist. lib. 1. cap. 29.

His advantages were, first his entrance upon *Kent*, the furthest corner of all the Island from the *Britains* and *Picts*, and so less prejudiced by their Church-policy; and at that very time interessed in the Roman air above all the other *Saxons*: for their King had Married a Daughter of *France*, one that was a pupil to *Rome*, and a devout woman; she first brought *Austin* into acceptance with the King, who also at that present held the chief power of all the Saxon Kings in this Isle, which was now of great efficacy in this work; for where Religion and power flow from one spring to one stream, its hard to chuse the one, and refuse the other. And thus *Rome* may thank *France* for the first earnest they had of all the riches of *England*, and we for the first entrance of all our ensuing bondage and misery. *Austin* had also a gift or trick of working miracles, wherein whether more suitable to the working of Satan, or of God, I cannot define. It seems they walked only in the dark; for either the *Britons* saw through them, or saw them not, nor could *Austin* with his miracles or fineness settle one footstep of his Church-policy amongst them; happily they remembring the Roman Dagon, liked the worse of the Roman woman; and the rather because the Carriage of their Messenger was as full of the Archbishop, as it was empty of the Christian: I would not touch upon particular passages of action, but that its so remarkable, that *Austin* himself, but a Novice in comparison of the British Bishops (the cleerest lights that the Northern parts of the world then had) and unto whom the right hand of fellowship was due by the Roman Canon, should nevertheless shew no more respect to them at their first solemn entrance into his presence than to Vassals, as I could not but note the same a strong argument that his whole work *ab initio*, was but a vapour of Prelacy. This the British Bishops soon espied, and

Bed hist. lib. 1. cap. 25.

Greg. Epist. lib. 9. Epist. 59.

2 Thes. 2.

shaped him an answer suitable to his message, the substance whereof was afterward sent him in writing by the Abbot of *Bangor*, and of late published by Sir *Henry Spelman*, as followeth:

BE it known (and without doubt) unto you, that we all, and every one of us are obedient and subject to the Church of God, and to the Pope of Rome; *and to every godly Christian, to love every one in his degree, in perfect Charity, and to help every one of them, by word and deed to be Children of God: And other obedience than this I do not know to be due to him whom you name to be Pope; nor by the Father of Fathers to be claimed or demanded. And this obedience we are ready to give and pay to him, and to every Christian continually. Besides we are under the government of the Bishop of* Caerleon *upon* Uske, *who is to oversee under God over us, and cause us to keep the way spiritual.*

This was the *Britons* resolution, and they were as good as their word; for they maintained the liberty of their Church five hundred years after this time, and were the last of all the Churches of *Europe* that gave their power to the Roman beast, and in the person of *Henry* the eighth, that came of that blood by *Teuther*, the first that took away that power again. *Austin* having met with this affront, and perceiving that the *Britons* were stronger in their Faith than he by his Miracles, cast about to try the Saxons curtesie, that what the Ephod could not, the Sword wrapt up therein should. I say not that he procured, but he threatned or propheſied the destruction of the Monks of *Bangor*; and it came to pass, and its by writers loudly suspected. Nevertheless the *Saxons* were not so zealous of their new Religion, as to make a new National quarrel between the *Britons* and themselves, but left the game to be played out by *Austin:* who finding by experience that it would not prove the work of one man, left it to successors to work out by degrees.

Bed hist. lib. 2. cap. 2. Concil. Brit. fo. 111.

grees in efflux of time. And thus *Austin*, neither good Servant to the Servant of Servants, nor good Monk, retires to settle his Saxon province, and to present, or rather to prostitute it to the lusts of that red whore, which was the general piety of those ignorant times.

CHAP. VI.

Of the imbodying of Prelacy into the Government of this Kingdom.

I Cannot think that the platform of the mystery of iniquity (when boiled to the height) was ever fore-seen, or in the aim of the wicked spirits on Earth, or those in Hell; yet were they all instruments of this monstrous birth, filled with subtilty and mischief, guided principally by occasion, and over-ruled by the Justice and Wisdom of God, to make a yoke for Monarchs, and a scourge to the world for their refusal of the government of Christ, until this Monster came to perfection, and wherein themselves were *feloes de se*, and wrought their own mischief: for *Austin* coming in as a third Proprietor with King and People; and having gathered the materials of a Church, reason told them that a form of government must be setled in that Church; the *Saxons* had no principles of their own, (for they had no learning) and to go to the *Britons* for a pattern might be thought ignoble; and where the choice is small, its soon made; *Rome* held now the most part of the Churches of *Europe* at School, the Saxons soon resolve, *Rome* that had been their Mother, shall be also their Father: and thus at one draught they drank up a Potion of the whole Hierarchy of *Rome* from the Pope to the Apparator, with a *quicquid imponitur & imponetur*, which was of such lasting efficacy, that it ceaseth not to work even to this day, although it was slow in the first provocation: For the Saxons had a Common-weal founded in the liberty of the people; and it was a masterpiece Tacit. mor. Serm.

for

for *Auſtin* and the Clergy, ſo to work, as to remain members of this Common-weal, and yet retain their hearts for *Rome*, (which was now grown almoſt to the pitch of that Anti-chriſt:) for reaſon muſt needs tell them that the Saxon principles would not ſuffer them to be *ad omnia* for *Rome*, nor the Roman Canon allow them to be wholly Saxon; and they ſaw plainly that the times were too tender to endure them to be declarative on either part, and therefore they choſe a third way, which was to preſerve the municipal Laws in moderation towards the Canon; and to that end to endeavour ſuch a temper upon the State as muſt admit them to be in repute, ſuch as without whom the Common-weal could not well ſubſiſt, no more than a body without a ſoul; and that few occaſions ſhould befal, but at leaſt in *ordine remoto*, muſt reflect upon both, and then all reaſon will beſpeak them to joyn in the legiſlative power and government of this Kingdom; but eſpecially as Biſhops, who are now *Magnæ ſpes altera Romæ*, and the very top-flowers of wiſdom and learning. And unto this temper the Saxons were ſufficiently prepared and inclinable; for it was no new thing for them to admit their Heatheniſh Prieſts into their general meetings, and allow them much power therein, and then its but the perſon changed, and they muſt do as much for their Biſhops, now they are become Chriſtian; eſpecially themſelves being all for the field and overgrown with a general ignorance, the common diſeaſe of thoſe times. Kings were in no better condition: it was hard for them to be Baptiſed, and not to be Baptiſed into *Rome*, and commonly under ſuch a Covenant as though many might repent of, yet none durſt amend: for when as the Pope is Lord of the Conſciences of the people, the Kings power may ſometimes out-face, but can never govern; the Saxon Kings were therefore fain to make a vertue of neceſſity, and advance Biſhops to be common favorites both of *Rome* and themſelves, to maintain good correſpondency between both Swords; and to countenance the power of the temporal Magiſtrate in caſes of diſpute, elſe he oftentimes command, and yet go without. Thus entred the Prelates upon affairs of Kings and Kingdoms, and became lovers of Lordſhips, and troublers of States; and if in any thing they

they ſerved their Countrey, they ſerved *Rome* much more; their merchandiſe was made of the policies and Counſels of all Kingdoms and States, and ſuch returns proceeded as were ſtill ſubſervient to the Roman intereſt; and they ſo intoxicated the domeſtick counſels in ſuch manner, as they generally ſtaggered, and many times came ſhort of home. Nevertheleſs, at the firſt this was but rare, clancular, and covered with much modeſty; for (excepting ſuch choice ſpirits as *Auſtin* had) Roman Prelacy in theſe younger times was but Velvet-headed, and endured not much greatneſs or big titles, but ſpake like a Lamb, *Ego non verbis quæro proſperari ſed moribus*, ſaid this *Gregory* to the Alexandrian Biſhop, who had put upon him the title of univerſal Biſhop or Pope: and whereas he had in a way of Courtſhip called *Gregories* Counſels commands, he ſtartles at it; *quod verbum juſſionis* ſaith he, *peto a meo auditu removere, quia ſcio quis ſum & qui eſtis.* Thus Prelacy firſt conveyed it ſelf into opinion, afterwards into conſcience, and ambition coming in the rear, made it become both Biſhop and Lord.

Greg. Epiſt. ad Eulog.

CHAP. VII.

Of Metropolitans in the Saxons time.

BEing in purſuit of the government of this Kingdom in elder times, and therein firſt of the perſons with their relation, then of their work, and laſtly of their Courts and Laws, and now in hand with the Eccleſiaſtical perſons, I ſhall deſcend to their particular ranks or degrees, and ſhall ſhew what they were in their original, and what overplus they had by Laws. And firſt concerning the Metropolitan. In his original, his Office was to viſit the Biſhops, admoniſh and exhort them, and in full Synod to correct ſuch diſorders as the Biſhop could not reform, and in all things to proceed according to the preſcript Canon.

Thus witneſſeth *Boniface*, an Archbiſhop to an Archbiſhop of an Archbiſhop; not according to the practice of the times wherein it was written, but according to the ancient rule. For long

Concil. Brit. p. 158.

An. 745. long before *Boniface* his time Archbiſhops were ſwoln beyond the girt of the Canon; and before that *England* was honoured with that rank of men, Metropolitans were become Metronomians, and above all rule, but that of their own will, and through common cuſtom had no regard to any other; ſo as if *England* will have them, it muſt be content to have them with their faults. But the truth is, the dignity or title, which you will, was a plant of that virulent nature that would ſcarce keep under-ground in the time of the hotteſt perſecution: for *Steven*, Biſhop of *Rome*, liked the title of univerſal Biſhop. And after a little peace, its a wonder how it grew to that height that it had; And no leſs wonderful that the Saxons gave entertainment to ſuch potentates. Much of whoſe ſpirits they might have obſerved in the entrance of their firſt Archbiſhop *Auſtin*, if God had not given them over to thraldom under that miſtery of iniquity, of ſinful man aſpiring into the place of God, taught by that Courtly meſſenger of *Rome*, becauſe they would not ſtoop to that myſtery of godlineſs, God manifeſted in the fleſh, as it was taught in ſimplicity by the rural Picts and Britons. But this was not all, for becauſe Archbiſhops were gotten above Canon, which was thought ſcandalous, therefore they gave as large a power by Canon as the former uſurpation amounted unto, and ſo ſtretched the Canon to the mind of the man, when as they ſhould have rather reduced the man to the Canon. The words of the Canon in our Engliſh tongue, run thus: It belongs to the Metropolitan Biſhop to rule Gods Churches; to govern, chuſe, appoint, confirm, and remove Abbots, Abboteſſes, Presbyters, and Deacons, and herewith the King hath nothing to do. And thus, though the apparent power of Archbiſhops was great and unlimited, yet what more was wrapped up in that word *Churches*, only time muſt declare, for its very likely that in thoſe daies it was not underſtood, yet the practice doth not obſcurely declare the matter; for before this Law was eſtabliſhed by *Withered* in a Council, wherein *Bertnaldus* Archbiſhop of *Canterbury* was preſident, and who was firſt Primate of *England*, *Theodore* Archbiſhop of *Canterbury*, uſed ſuch power over other Biſhops in ordaining and removing them, as a writer

Mag. cent. 3. cap. 7.

Concil. Brit. p. 190.

An. 694. An. Brit. p. 55.

ter saith, that his rule was no other than *perturbatio* and *impetus animi*, and his carriage towards *Wilfrid* produced as a testimony. But the Metropolitan in *England* as the times then were, had yet a further advantage, even over Kings themselves; for there were divers Kingdoms in this Island, and Kings had no further power than their limits afforded them: but there was but one Metropolitan for a long time in all the *Saxon* Territories, so as his power was in spirituals over many Kingdoms, and so he became indeed *alterius orbis Papa*; and it was a Remarkable testimony of Gods special providence, that the spirits of these petty Popes should be so bound up under the notion of the infallibility of the *Roman* Chair; that they had not torn the *European* Church into as many Popedoms as Provinces. But no doubt God ordered it for a Scourge to the World, that Antichrist should be but one, that he might be the more absolute Tyrant, and that Kings should bow down their necks under the double or rather multiple yoke of Pope and Archbishops, for their Rebellion against the King of Kings.

Malmsb. lib. 1. cap. 2. Ant. Brit. p. 54.

CHAP. VIII.

Of the Saxon *Bishops.*

HAd not Bishops been somewhat sutable, the *Roman* Clergy had not been like it self; and it had been contrary to *Austin*'s principles to have advanced to Bishopricks men better qualified than himself. They first ruled the *Saxon* Church joyntly in the nature of a Presbytery till about Sixty years after *Austin*'s time, their pride would not endure together any longer; and it may be grew somewhat untractable under the Metropolitan, that resolved to be prouder than all; and thereupon *Theodore* Archbishop of *Canterbury* first divided his Province into Five Dioceses, and by appointment of the Kings and People placed Bishops over each, every one of them being of the right *Roman* stamp, as himself was of the right *Roman* shaving. And it had been a wonder if Episcopacy now

Ant. Brit. 52. Concil. Brit. 133. Ant. Brit. 54. Ibid. 53.

for the ſpace of Three hundred years degenerated, and that into ſuch a monſtrous ſhape as a Pope, ſhould by tranſplanting become regenerate into their original condition of meekneſs and humility. But it's much greater wonder that they ſhould become ſo purely ambitious as not to endure a thought of the ways of ſobriety, but would be proud by Law; to let all the world know that they held it no infirmity but an honour. For albeit that in the firſt time the Biſhops work was to inſtruct and teach, to ſee the ſervice of God to be diligently and purely adminiſtred in publick Congregations, to Exhort, Reprove, and by teaching to amend ſuch matters as he ſhould find in life and Doctrine contrary to Religion: and accordingly they carried themſelves meekly and humbly, ſtudying peace and truth, and medled not with Secular Affairs: they are now grown up into ſtate, and muſt now ride on horſe-back that were wont to go on foot Preaching the Word; and muſt be reſpected above the rank of ordinary Presbytery: none muſt doubt of their truth, nor queſtion their words, but they muſt be holden Sacred as the word of a King, *ſine juramento ſit irrefragabile.* Their preſence muſt be a Sanctuary againſt all violence; all Clerks and Religious houſes muſt ſtoop under their power; their ſentence muſt be definitive; and thus advanced they muſt keep ſtate, *viz.* not go too far to meet Princes in their approach towards them, nor to light off their Horſes backs to do Princes Reverence at their meeting: becauſe they are equal to Princes and Emperours; and if any Biſhop ſhall behave himſelf otherwiſe, and after the old ruſtical faſhion, (for ſuch are the words of the Canon) for diſgrace done to their Dignity they muſt be ſuſpended: ſo as by their own confeſſion Biſhops henceforth are Biſhops of a new faſhion, that muſt incur a note of infamy, for ſhewing any geſture of humility to Princes. which if any man will ſee more fully, let him peruſe the Canon if he pleaſe. But this is not ſublime enough; they muſt be not only equal, but in many reſpects ſuperiour to Princes: for in matters that concern God, *Omnibus dignitatibus præſunt*; and more plainly, Princes muſt obey them, *Ex corde cum magna humilitate*; and this was allowed of by *Offa* the great in a legatine Synod. And thus highly advanced

Concil. Brit. 238. 246, 261.

Mag. Cent. 7. cap. 7.

Bed. hiſt. lib. 4. cap. 3.

Concil. Brit. 196 An. 697.

Ibid. 329. An. 816.

Concil. 8. gen. conſtant. can. 14.

Mag. cent. 8. cap. 9.

ced Bishops are now consecrated to any work, and make every thing Sacred. Oaths taken before them are of highest moment; and therefore the trial of Crimes before them and the ackowledgment of Deeds of conveyance in their presence are without controll. Their custody is a sufficient Seal to all weights and measures, which they committed to some Clerk whom they trusted; and at this day (though a Lay-person) beareth title of Clerk of the Market. And although anciently they might not *interesse saecularibus*; yet afterwards it became a part of their Office to assist Judges in secular causes, to see that justice be not wronged: and had the sole cognisance of all causes criminal belonging to the Clergy, their Tenants or Servants; and in their Synods their power reached to such Crimes of Lay-men as came within the favour of the Canon, though it were but in the cold scent, as the Laws of *Athelstane* and other his successors sufficiently set forth. And thus dressed up let them stand aside, that room may be made for their Train.

Concil. Brit. 182. An. 693. Ll. Sax. cap. 37. An. 928. Ll. Æthelst. cap. 11 Concil. Brit. Concil. Brit. p. 197. An. 697.

CHAP. IX.

Of the Saxon *Presbyters.*

THese follow their Lords the Bishops as fast as they can hunt; for being of the same Order (as the less proud times acknowledged) they would not be under foot, and the others above the top. True it is, that the Bishops loaded them with Canons, and kept them under by hard work, under the trick of Canonical obedience: yet it was no part of their meaning to suffer them to become vile in the eyes of the Laity; for they knew well enough that the Presbyters must be their bridles to lead and curb the people; and their eyes to see whether the winds from below blew fair or foul for them, whose consciences already told them that they merited not much favour from the people. They see it therefore necessary to inhaunce the price of a Presbyter somewhat within the aloye of a Bishop; to the end that the Presbytery may not be too like the Babylo-

Concil. Brit. p. 576.

nian Image whose head was Gold, and feet of Iron and Clay. A Presbyter therefore they will have to be of equal Repute with a Baron; and his person shall be in Repute so Sacred, as that all wrong done thereunto must be doubly punished with satisfaction to the party, and to the Church. His Credit or Fame must not be touched by Lay-testimony. Nor is he to be judged by any Secular power; but to be honoured as an Angel. Such are these instruments of the Bishops Government; and these are put as a glasse between the Bishops and people, and could represent the people to the Bishop black or white, and the Bishop to them in like manner, as they pleased; and so under fear of the Bishops curse kept the people in awe to themselves, and it.

Concil. Brit. p. 448. L. Ethelst. 13. Ibid. 406. Concil. Brit. p. 273. Ll. Æthel c. 2. Ll. Canut. e. 11. Mag. cent 8. cap. 9.

CHAP. X.

Of other inferiour Church-Officers amongst the Saxons.

THey had other inferiour degrees of the Clergy, which because they are merely subservient, and not considerable in Church-government, I shall only touch upon them. The first are called Deacons, which were attending upon the Presbyters to bring the offerings to the Altar, to read the Gospel, to Baptize, and Administer the Lords Supper: Then follow the Sub-deacons who used to attend the Deacons with consecrated Vessels, and other necessaries for the Administring of the Sacraments. Next these Acolites, which waited with the Tapers ready lighted while the Gospel was read, and the Sacrament consecrated. Then Exorcists, that served to dispossess such as are possessed by the Devil, an Office (as it may seem) of little use, yet very ancient; for they are found at the Synod at *Arles*, which was within Three hundred years after Christ's death. Lecturers come next, who served to read and expound; and these were of use when Churches began to multiply, and Presbyters grew idle. Lastly, Ostiaries; which used to ring the bells, and open and shut the Church-doors.

Deacons.

Sub-Deacons.

Acolites.

Exorcists.

Concil. Brit. p. 54.

Lecturers.

Ostiaries.

These are the several ranks of Church-officers, being Seven in

in number (for Bishops and Presbyters make but one) and might be (as thus ordered) the Seven heads of the Beast whereon the woman sitteth; and with much ado make up a kind of Church-service somewhat like a great Hoe in a ship-yard at the stirring of a little log, and are nevertheless well paid for their labour. Concil. Brit. 261. An. 750.

CHAP. XI.

Of Church-mens maintenance amongst the Saxons.

I Take no notice in this account of the Abbats and Priors, & other such Religious men, as they were then called; nor can I pass them amongst the number of Church-governours or Officers, being no other than as a sixth finger, or an excrescence that the body might well spare, and yet they sucked up much of the blood and spirits thereof. But as touching the maintenance of those formerly mentioned, who had a constant influence in the Government of the affairs of the publick worship of God, and regard of the salvation of the Souls of the people; I say their maintenance was diversly raised, and as diversly imployed: First, through the bounty of Kings and great men, Lands and Mannors were bestowed upon the Metropolitan and Bishops, in free Alms; and from these arose the maintenance that ascended up in abundance to the higher Region of the Clergy, but came again in thin dews scarce enough to keep the Husbandmans hope from dispair; otherwise had not the Prelates so soon mounted up into the chair of Pomp and State, as they did, I say, these are given in free Alms, or more plainly, as Alms free from all service: and this was doubtless soon thought upon (for it was formerly in president with their Heathenish Priests and Druids; as *Cæsar* noteth, that they had *omnium rerum immunitatem*:) yet with the exception of works of publick charity and safety, such as are maintaining of high ways, repairing of Bridges, and fortifying of Castles, &c. and hereof the presidents are numerous. The work whereto this wages was appointed was the worship of God, and increase Com. 6. c9

of

of Religion; and thus not only many of the Kings Subjects were exempted from publick service, but much of the Revenue of the Kingdom formerly imployed for the publick safety became acquitted from the service of the Field, to the service of the Bead; the strength of the Kingdom much impaired, and the Subjects much grieved; who in those early times saw the inconveniences, and complained thereof to their Kings, but could not prevail. This was the vintage of Kings and great men, but the gleanings of the people were much more plentiful; (for besides the Courts which swelled as the irregularities of those times increased, and thereby enriched the Cofers of that covetous Generation, the greatest part whereof ought by the Canon to go to the publick) the best part of the setled maintenance, especially of the inferiour degrees, arose from the good affections of the people, who were either forward to offer, or easily perswaded to forgoe constant supply for the Church-men out of their Estates as well real as personal, especially in the particulars ensuing. The most ancient of all the rest was the first-fruits, which was by way of eminency called *Cyrick-sceate*, or in more plain English, Church-fee; which was always payable upon St. *Martins* day unto the Bishop out of that house where the party did inhabit upon the day or Feast of the Nativity. It was first granted by Parliament in the time of King *Ina*; and in case of neglect of payment or denial it was penal eleven-fold to the Bishop besides a fine to the King, as was afterwards ordered by *Canutus*.

M. Paris in vit. Eadrick. Abb.

An. 1009. Concil. Brit. 513. Ll Ætheld. 31.

First fruits.

Concil. Brit. p. 185. An. 693. Concil. Brit. p. 545.

Tythes.

After the first fruits cometh to consideration the Revenue of Tithes, whereof I find no publick act of state to warrant till the Legatine Council under *Offa*: although the Canon was more ancient. The Bishop at the first was the general Receiver as well of these as of the former, and by him they were divided into Three parts, and imployed one to the poor; another for the maintenance of the Church; and a Third part for the maintenance of the Presbyter. But in future times many acts of state succeeded concerning this, amongst which that grant of *Athelwolfe* must be a little paused upon. Some writers say that he gave the tenth Mansion, and the tenth of all his goods: but *Malmsbury* saith, the tenth of the hides of Land; but

Concil. Brit. p. 298. An. 787.

Concil. Brit. 259.

Ingulfus.

Gest. pontif. Lib. 2. cap. 2.

but in the Donation it ſelf, as it's by him recited, it's the Tenth Manſion. But *Math. Weſtm.* underſtands that he gave the Tenth part of his Kingdom; but in the Donation by him publiſhed it is *decimam partem terræ meæ.* In my opinion all this being by Tradition, little can be grounded thereupon. The form of the Donation it ſelf is uncertain and various, the inference or relation more uncertain and unadviſed; for if the King had granted that which was not his own, it could neither be accounted pious or rational. Nor do we find in the Donation that the King in preciſe words gave the Land, or the Tenth part of the Land of his Kingdom; but the Tenth of his Land in the Kingdom: and the exemplification publiſhed by *Math. Weſtm.* countenanceth the ſame, albeit the Hiſtorian obſerved it not; but ſuppoſe that the Kingdom joyned with the King in the conceſſion, and that it was the courſe to paſs it only in the Kings name, yet could not the Tenth Hide, Tenth Manſion, or Tenth part of the Kingdom be granted without confuſion in the poſſeſſions of the people; for either ſome particular perſons muſt part with all their poſſeſſions, or elſe out of every mans poſſeſſion muſt have iſſued a proportionable ſupply, or laſtly a Tenth part of every mans poſſeſſion, or Houſe and Land, muſt be ſet forth from the reſt: or ſome muſt loſe all and become beggars, to ſave others: all which are to me equally improbable. Nevertheleſs I do not take the thing to be wholy fabulous, but may rather ſuppoſe that either a Tenth was given out of the Kings own Demeſnes, which is moſt probable; or elſe the Tenth of the profits of the Lands throughout the Kingdom; and that it was by publick act of State, and that clauſe forgotten by Hiſtorians. And thus might a good precedent be led to *Alfred*, *Athelſtan*, and other Kings, who ſetled Laws under payment of penalties, and appointed the times of payment, *viz.* The ſmall Tithes at *Whitſuntide*, and the great Tithes at *Alhollantide.*

An. 854.

Concil. Brit. p. 39. An. 905. Ibid. 527. An. 1009.

Another Tribute was that of Luminaries, which by *Alfred* and *Guntbrum* was firſt ſetled by Law, although it had been before claimed by Canon. It was payable thrice a year, *viz.* *Hollantide*, *Candlemas* and *Eaſter*, at each time a half penny upon every Hide of Land, and this was under a penalty alſo.

Luminaries. Concil. Brit., p. 377. Ibid. 545. An. 1032.

Another

Plough-alms. An. 905. An. 1009.

Another Income arose from the Plough, and under the name of Plough-Alms: at the first it was granted by *Edward* the Elder generally, and the value was a penny upon every plough; and in after times it was ordained to be paid Fifteen days after *Easter*.

Soul-shot. Concil. Brit. p. 371. An. 1009.

Next comes a Fee at the death of the party, which was commonly called Soul-shot: and paid (before the dead body was buried) unto that Church where the dead parties dwelling was; so as they never left paying and asking so long as the body was above ground; and it's probable turned into that fee which was afterward called a mortuary.

Glebe. Concil. Brit. 260. An. 750.

The incumbent also of every Church had Glebe laid to the Church; besides oblations, and other casual profits, as well arising from houses bordering upon the Church, as otherwise. All these four last were payable to the Priest of that particular Congregation, and had not their beginning till Parishes came to be setled.

Peterpence.

Lastly, the zeal of the charity of *England* was not so cold as to contain it self within it's own bounds: they were a dependent Church upon *Rome*, and their old Mother must not be forgotten. An alms is granted, for under that lowly title it passed first, but afterwards called *Romscot* or *Romesfeogh*, or *Heord*-penny; for it was a penny upon every hearth or chimney, payable at the Feast of St. *Peter*, *ad vincula*; and therefore also called *Peter*-pence; it was for the Popes use; and was setled under great penalties upon the defaulters. It arose by degrees and parcels: for first *Ina* the *Saxon* King granted a penny out of every house in his Kingdom: after him *Offa* granted it out of every dwelling house that had ground thereto occupied to the yearly value of Thirty pence, excepting the Lands which he had purposed for the Monastery at St. *Albans*: This *Offa* had a much larger Dominion than *Ina*, and was King over Three and twenty Shires: after whom *Æthelwolf* passed a new grant thereof out of his whole Kingdom, which was well nigh all that part which was called *Saxony*, with this proviso nevertheless, that where a man had divers dwelling houses, he was to pay only for that house wherein he dwelt at the time of payment. Afterward *Edward the Confes-*

Concil. Brit. p. 230. An. 725.

Concil. Brit. p. 311. An. 791.

Ibid. 343. An. 847.

Ibid. 6. 1.

for

for confirmed that Donation out of such Tenements as had Thirty pence *vivæ pecuniæ*. If then it be granted, that the *Saxon* Subjects had any property in their Lands or Tenements, as no man ever questioned, then could not this charge be imposed without the publick consent of the people; and then the assertions of *Polidore* and the Monks, who tell us that *Ina* and *Offa* had made the whole Kingdom tributary to *Rome*, must needs be a mistake, both in the person, and the nature of the gift, seeing there is a much more difference between an Alms and a Tribute, than between the King and the people. Now that it was an Alms and not a Tribute, may appear, for that the original was a suddain pang of zeal, conceived and born in one breath, while the King was at *Rome*; and therefore not imposed as a Tribute. Secondly, it was *ex regali munificentia*, and therefore free. Thirdly, it was expresly the gift of the King; for the Law of St. *Edward* which provideth for the recovery of the arrears of this Money, and enjoyneth that they must be payed to the King, and not to *Rome*, as it was in the days of *Canutus*, and *Edgar*, rendereth the reason thereof to be, because it was the Kings Alms.

Vit. Offæ. 19.

Concil. Brit. p. 445 545. Concil. Brit. p. 621.

Secondly, that it was an Alms only from the King, and out of his own Demesnes, may seem not improbable, because it was *ex regali munificentia*, which could never be affirmed if the gift had been out of the Estates of others. Secondly, it was granted only out of such houses as yielded Thirty pence Rent, called *vivæ pecuniæ*, because in those times Rent was paid in Victual; so as it may seem that only Farms were charged herewith: and not all mens Farms neither; for the general income will never answer that proportion. The particular hereof I shall in brief set forth. It appeareth in the former quotation, that *Offa* charged this Leavy upon the Inhabitants dwelling in Nine several Dioceses, viz. *Hereford*, which contained the City and County adjacent. 2. *Worcester*, containing the Cities and Shires of it and *Gloucester*. 3. *Lechfield*, containing *Warwickshire*, *Cheshire*, *Staffordshire*, *Shropshire*, and *Darbishire*. 4. *Leicester*, with the County adjacent. 5. *Lincoln*, with the County adjacent. 6. *Dorchester*, whereto belonged *Northamptonshire*, *Buckinghamshire*, *Bedfordshire*, *Huntingtonshire*.

ſhire, *Cantabridgeſhire*, and half *Hartford-ſhire*. 7. *London*, with *Eſſex*, *Middleſex*, and the other half of *Hartfordſhire*. 8. *Helmham*, with *Norfolk*. 9. *Domuck* or *Dunwich*, with *Suffolk*. In which nine Dioceſſes were two and twenty ſhires. And he further granted it out of *Spatinghenſhire* (now *Nottingham*) whoſe Church belonged to *York*. But in *Ethelwolf's* time the grant was enlarged and extended into Fifteen Dioceſſes; which together with their ſeveral charge out of the Engliſh Martyrology I ſhall particularize, as followeth:

Fox Martyr. p. 340.

	l.	s.	d.
Cantuar. Dioceſ.	07.	18.	0.
London	16.	10.	0.
Roffen	05.	12.	0.
Norwic.	21.	10.	0.
Elienum	05.	00.	0.
Lincoln	42.	00.	0.
Ciſtrens	08.	00.	0.
Winton	17.	06.	8.
Exon	09.	05.	0.
Wigorn	10.	05.	0.
Hereford	06.	00.	0.
Bathon	12.	05.	0.
Latisburgh	17.	00.	0.
Coventree	10.	05.	0
Ebor	11.	10.	0.
	200.	06.	8.

The whole ſum whereof not exceeding two hundred pounds ſix ſhillings and eight pence, will not amount to ſeven hundred pounds of now currant money, if the weight of a penny was not leſs in thoſe times than in the Reign of *Edward* the firſt, when it was the twentieth part of an ounce, and that the twelfth part of a pound, as by the Statute thereof made may appear. Nor can the difference be much (if any) in regard of the vicinity of the time of this extract to that of the Statute: for though no particular date thereof appear, yet it ſeemeth to be done after the tranſlation of the See from *Thetford* to *Norwich*, which was done in *William Rufus* his time; and

and after the erecting of the Bishoprick of *Ely*, which was in the time of *Henry* the first. Now albeit this charge was in future times diversely ordered and changed; yet upon this account it will appear, that not above Eight and forty thousand and eighty Houses were charged in this time of *Edward* the Second with this Assessement; which is a very small proportion to the number of Houses of Husbandry in these days, and much more inferiour to the proportion of Houses in those times, if *Polydores* observation be true, that in the Conquerours time there were Sixty thousand Knights Fees; and as others, Fifty thousand Parishes. It may therefore be rather thought that none but the Kings Farmers were charged herewith, notwithstanding the positive Relations of Writers, who in this case as in most others, wherein the credit of *Rome* is ingaged, spare not to believe lightly, and to write largely. And thus for their Sevenfold Church-Officers; we have also as many kinds of constant maintenance. One in Lands and Tenements, and Six several kinds out of the Profits and the personal Estate, besides the emergent benefits of Oblations and others formerly mentioned. Brit. Antiq. P. 18.

CHAP XII.

Of the several Precincts of Jurisdictions of Church-Governours amongst the Saxons.

THe Church-officers thus called to the Drum and paid, are sent to their several charges, over Provinces, Dioceses, Deaneries, and Parishes, as they could be setled by time and occasion. Before the *Saxons* arrival, *London* had the Metropolitan See, or was the chiefest in precedency; for Archbishops the *Britons* had none. Afterwards by advice of the wise men, *Canterbury* obtained the precedency for the honour of *Austin*, who was there buried. The number of Provinces, and their several Metropolitan Sees was first ordered by advice of Pope *Gegory*, who appointed two Archbishops in *Saxony*; the one to reside at *Canterbury*, the other at *York*; and Malms. gest. Reg. lib. 1. c. 4. Bed. hist. lib. 1. cap. 29.

that each of them should have Twelve Bishops under them; but this could never be compleated till *Austin* was dead; as by the Epistle of *Kenulphus* to Pope *Leo* appeareth. Nor then had the Pope the whole power herein intailed to his Tripple-Crown; for the same Epistle witnesseth, that the Council of the wise men of the Kingdom ruled the case of the Primacy of *Canterbury*. And *Offa* the King afterward divided the Province of *Canterbury* into two Provinces, which formerly was but one. The Precincts of Dioceses have been altered ordinarily by Kings, or the Archbishops and their Synods, as the lives of those first Archbishops set forth. *Theodore* had divided his Province into Five Dioceses, and within a hundred years after *Offa* we find it increased unto Eleven Dioceses.

Malmesb. loco. citat.

Vit. Offæ. Malmesb. Concil. Brit. 133. Antiq. Brit. Antiq. Brit. p. 54. M Westm. An. 775.

Dioceses have also been subdivided into inferiour Precincts called *Denaries* or *Decanaries*, the chief of which was wont to be a Presbyter of the highest note called *Decanus*, or Arch-Presbyter. The name was taken from that Precinct of the Lay-power, called *Decennaries*, having Ten Presbyters under his visit, even as the *Decenners* under their chief. The smallest precinct was that of the Parish, the oversight whereof was the Presbyters work: they had Abbeys and other Religious houses, but these were however Regular amongst themselves, yet irregular in regard of Church-government, whereof I treat.

Ll. Edw. conf. cap. 31. Lindwood. l. 1. de constit. c. 1.

CHAP. XIII.

Of the manner of the Prelates Government of the Saxon *Church.*

HAving discoursed of the persons and Precincts, it now befals to touch upon the manner of the Government of the Church by the *Saxon* Prelates; which was not wrapped up in the narrow closet of private opinion, but stated and regulated by publick Council, as well in the making as executing of Laws already made; This course was learned from Antiquity, and inforced upon them by a *Roman* constitution, in the case that concerned Archbishop *Theodore* and *Wilfrid* upon

Malmesb. gest. pontif. lib. 3. fo. 263.

upon this ground, *Quod enim multorum concilio geritur nulli consentientium ingerat scandalum.* These are most ordinarily called Synods, although at the pleasure of the Relator called also Councils, and are either Diocesan or Provincial, or National, and these either particular or general. The general consisted of all the Bishops and Clergy; and such was the Synod under Archbishop *Dunstan* called. The National Synods were diversly called; sometimes by the Pope, sometimes by the King, as the first moving occasion concerned either of them. For Pope *Agatho* in a Synod at *Rome* ordered that a Synod should be called in *Saxony* (viz, *England*) *Sacrosancta authoritate & nostra Synodali unitate*, and many Legatine Synods in succeeding times demonstrate the same. That the *Saxon* Kings also called them upon occasion, is obvious through all the Councils, and needless to instance amongst so many particulars. The Provincial Synods were sometimes convocated by the King, and sometimes by the Archbishop, and sometimes joyntly. The Diocesan were called by the Bishop. In the National and Provincial sometimes Kings moderated alone, sometimes the Archbishop alone, and sometimes they joyned together. The Assistants were others both of the Clergy and Laity, of several Ranks or Degrees; and it seemeth that Women were not wholly excluded; for in a Synod under *Withered* King of *Kent*, Abbatisses were present and attested the acts of that Synod, together with others of the Clergy of greater degree. The matters in action were either the making or executing of Laws for Government; and because few Laws passed, that did not some way reflect upon the King and people, as well as the Clergy, the King was for the most part present, and always the Lords, and others: Yet if the matters concerned the Church in the first act, the King though present, the Archbishop was nevertheless president; as it befell at a Synod at *Cleversho*, *An.* 747. and another at *Celchith*, *An.* 816. And in the Reign of *Edward* the elder, though the Synod was called by the King, yet the Archbishop was president. Concerning all which it may be in the sum well conceived, that in the penning of the Councils aforesaid, either the Clergy (being the Pen-men) were partial or negligent in the setting down.

Baronius An. 950.

Malmesb. gest. pontif. lib. 3. p. 263. An. 680.

Concil. Brit. p. 191. 310, & 318.

Ibid. 316. 318, 387.

Concil. Brit. 245. 317, 387.

down of the right form; and that the Kings called these Assemblies by instance of the Archbishop, and sometime presided in his own person, and sometimes deputed the Archbishop thereunto.

The executing of Laws was for the most part left to the Diocesan Synods, yet when the cases concerned great men, the more general Councils had the cognisance, and therein proceeded strictly, sparing no persons of what degree soever; Examples we find hereof, amongst others, of one incestuous Lord, and two delinquent Kings; *Edwy* and *Edgar*. Nay they spared not the whole Kingdom; for in the quarrel between *Cenulphus* the King and Archbishop *Wilfrid* the whole Kingdom was under interdict for six years space; and no baptism Administred all that time. Nor were they very nice in medling with matters beyond their sphere, even with matters of property; for at a provincial Council (for so its called) they bore all down before them, even the King himself, as in the case between *Cenulphus* the King and the Archbishop of *Canterbury* concerning the Monastery of *Cotham*. The like also of another Synod concerning the Monastery of *Westburgh*: Its true the Lords were present; and it may be said that what was done, was done in their right; yet the Clergy had the rule, and begat the Child; and the Lay-Lords only might challenge right to the name. This concurrence of the Laity with the Clergy contracted much business, and by that means a customary power, which once rooted, the Clergy after they saw their time (though not without difficulty) turned both King and Lords out, and shut the doors after them, and so possessed themselves of the whole by Survivorship. But of this hereafter. p. 45

M. Westm. An. 955. 958. Concil. Brit. 479.

Ibid. 337.

Ibid. 319. 332. Concil. Brit. P. 334.

The particular Diocesan Synods were, as I said, called by the Bishops within their several Dioceses. The work therein was to preach the Word as a preparative; then to visit and inquire of the manners of the Clergy in the worship of God, and of all matters of scandal, and them to correct. These Synods were to be holden twice every year, at certain times and if they met with any matter too hard for them to reform, they referred it to the Provincial or National Synod.

Mag. cent. 8. cap. 9.

CHAP.

CHAP. XIV.

Of Causes Ecclesiastical.

AS the power of Synods grew by degrees, so did also their work; both which did mutually breed and feed each other: Their work consisted in the reforming and setling matters of Doctrine, and Practice. The first was the most ancient, and which first occasioned the use of Synods. In this Island the Pelagian Heresie brought in the first precedent of Synods that we have extant; and herein it will admit of no denial, but in the infancy of the Church the Teachers are the principal Judges of the nature of Errour and Heresie, as also of the truth; as the Church is the best guide to every Christian in his first instruction in the principles; but after some growth there is that in every Church and Christian that makes it self party in judging of truth and errour jointly with the first Teachers. And therefore its not without reason, that in that first Synod, although *Germanus* was called *Judex*, yet the people hath the name of *Arbiter*, and 'tis said that they did *contestare judicium*. *Heresie.* An. 446. Beda. hist. l 1.

Blasphemy was questionless under Church-censure, but I find no footsteps of any particular Law against it: yet in *Scotland* a Law was made to punish it with cutting out the tongue of the delinquent: but it may be feared that neither the *Saxons* nor their *Roman* Teachers were so zealous for the honour of Gods name, as to regard that odious sin; unless we should account them so holy as that they were not tainted therewith, and so needed no Law. *Blasphemy.* Conc l. Brit. p. 341 An. 840.

But Apostacy was an early sin, and soon provided against; the Church-censure was allowed of in *Britain* before the *Saxons* Church had any breath: afterward it was punished by Fine and Imprisonment, by a Law made by *Alfred*, as he provided in like manner for other Church Laws. *Apostacy.* An. 314. Concil. Brit. 41. Ibid. 367.

The times anciently were not so zealous for due observance of Divine worship, unless by the Church-men who were the leaders *False worship.*

ders therein; a forrain Canon was made to enforce that duty long before; but it would not down with the rude *Saxons*: they, or the greater ſort of them were content to come to Church only to pray and hear the word, and ſo went away; this is noted by that ancient writer in nature of an imputation, as if ſomewhat elſe was to be done which they neglected; this ſomewhat was the Maſſe, which in thoſe days was wont to be acted after the Sermon ended: and it's probable that if the Nobles were ſo ill trained up, the inferiour ſort was worſe; and yet find we no Law to conſtrain their diligence: or to ſpeak more plainly, it's very likely the *Saxons* were ſo reſolute in their worſhip, as there was either little need of Law to retain them, or little uſe of Law to reclaim them; for it's obſerved in their late Pſalter, that the *Roman* Clergy was not more forward to Image or Saint-worſhip, than the people were backward thereto; and therein ſhewed themſelves the true Seed of their Anceſtors in *Germany*, of whom it's obſerved that they indured not Images, but worſhipped a Deity which they ſaw *ſola reverentia*.

Canon. Apoſt. cap. 10.

Bed hiſt. lib. 3. cap. 26.

Mag. Cent. 7. cap. 6.

Concil. Brit. p. 306.

Tacit. Mor. Germ.

Sorcery and Witchcraft they had in abomination: yet it was a ſin always in a miſt, and hard to be diſcerned but by the quick-ſighted Clergy; and therefore it was left to their cenſure, as a ſin againſt the worſhip of God. This *Ethebald* the Mercian King firſt endowed them with; and they alone exerciſed the Cogniſance thereof till *Alfred*'s time, who inflicted thereupon the penalty of Baniſhment: but if any were killed by inchantment, the delinquent ſuffered death by a Law made by *Æthelſtan*. And thus by degrees became one and the ſame crime puniſhable in ſeveral juriſdictions in ſeveral reſpects.

Concil. Brit. 246. An. 745.

Ibid. 377.

Ibid. 405. An. 928.

Perjury.

Concerning Perjury, the Prelates had much to do therewith in future times, and they had the firſt hint from *Ina* the *Saxon* King's grant to them of power to take teſtimonies upon Oath; as ſuppoſing that the Reverence that men might bear to their perſons and functions would the rather over-aw their tongues in witneſſing; that they would not dare to falſifie, leſt theſe knowing men ſhould eſpie it, and forthwith give them their doom. But no poſitive Law allowed them that power of ſentence

Ll. Sax. fo. 4.

sentence till *Æthelstan*'s Law gave it and upon conviction by the same Law distested the delinquents Oath for ever. An. 9, 28.

Sacriledg comes in the next place, being a particular crime merely of the Clergy-mens exemption and naming; for before they Baptized it, you might have well enough called it Theft, Oppression, or Extortion. This crime the Prelates held under their cognisance by vertue of that general Maxim, that all wrong done to the Church must be judged by the Church. The first time that I can observe they challenged this power, was by *Egbert* Archbishop of *York* in the Seventh Century. *Sacriledg.* Concil. Brit. p. 127. An. 670. Ibid. 265.

But nothing was more their own than Simony; and that may be the reason why we find so little thereof either for the discovery or correcting thereof. All former crimes were in their first act destructive to the Church, but this advantagious; and therefore though the Canons roar loud, yet the execution is not mortal, because it's bent against the dignity, and not the gain; and although the Canon would not that any Presbyter should be made, but presented therewith to some place to exercise his function in, yet it serveth not for those times when men were sent forth rather to make flocks, than to feed flocks. *Symony.* Concil. Brit. 163.

And yet the theam of marriage was the best dish in all their entertainment: they had the whole common place thereof with the appurtenances within the compass of their Text, before ever it attained the honour of a Sacrament. It was a branch of *Moses* Law, whereof they were the sole expositors, and so seemeth to be cast upon them by a kind of necessity, as an Orphan that had no owner. Nevertheless a passage in *Eusebius* seemeth to repose this trust in the civil Magistrate: for he relateth out of *Justin Martyr* concerning a Divorce sued out by a godly Matron long before the Prelacy got into the Saddle, or the Clergy had the power of Judicature: And whereas *Lucius* taxed *Urbicius* the Magistrate for punishing *Ptolomy* who was guilty of no crime worthy of his cognisance in that kind; amongst other crimes enumerated by him, whereof *Ptolomy* was not guilty, he nameth the crimes against the Seventh Commandement, intimating thereby a power in *Matrimonial causes.*

the Judge to have cogniſance of thoſe crimes as well as others. But the Prelacy beginning to mount, nibled at it in the ſecond Century, but more clearly in the fourth, when the perſecutions were allayed, and men of learning began to feel their honour; and never left purſuit till they had ſwallowed the bait, and exerciſed not only a judiciary power in determining all Doubts and Controverſies concerning the ſame; but challenged an efficienciary power in the marriage-making. This garland *Auſtin* brought over with him, and crowned the *Saxon* Clergy therewith, as may appear by his Queres to Pope *Gregory:* and thus the *Saxons* that formerly wedded themſelves, became hereafter wedded by the Clergy; yet the civil Magiſtrate retained a ſupream Legiſlative power concerning it, as the joynt marriages between the *Saxons*, *Britons*, and *Picts* do manifeſt; for it's ſaid of that work, that it was effected *per commune concilium & aſſenſum omnium Epiſcoporum, procerum, comitum & omnium ſapientum ſeniorum & populorum totius regni & per præceptum Regis Inæ*, and in the time of *Edward* their King were enacted Laws or rules concerning marriage, and ſo unto the Lay-power was the Eccleſiaſtical adjoyned in this work.

Beda. hiſt. l. 1. cap. 27.

Concil. Brit. 219.
Concil. Brit. p. 427. An. 944.

The Clergy having gained the principal, with more eaſe obtained the appurtenances; ſuch as are Baſtardy, Adultery, Fornication, and Inceſt. There was ſome doubt concerning Baſtardy, becauſe it trenched far into the title of inheritance, and ſo they attained that *ſub modo*, as afterward will appear. The Laws of *Alfred* and *Edward* the elder allowed them the cogniſance of Inceſt; although nevertheleſs the civil Magiſtrate retained alſo the cogniſance thereof, ſo far as concerned the penalty of the temporal Law. Adultery and Fornication they held without control; yet in the ſame manner as the former; for the civil Magiſtrate had cogniſance thereof, ſo far as touched the temporal penalty: And to give them as much as can be allowed, it's probable that in all or moſt of the caſes foregoing they had the honour to adviſe in determining of the crime, and declaring the Law, or defining the matter; for in thoſe ignorant times it could not be expected from any other.

Baſtardy.

Inceſt.
Concil Brit. p. 392. An. 905.

Adultery. Fornication.
Concil. Brit. p. 558.

But

But how the cogniſance of Tythes crept under their wing, might be much more wondred at, for that it was originally from the grant of the people; nor can a better ground be found by me than this, that it was a matter of late original; for till the Seventh Century the times were troubleſome, and no ſetled maintenance could be expected for the Miniſtry, where men were not in ſome certainty of their daily Bread. And as it will hardly be demonſtrated that this title was ever in any poſitive National Law before the time of *Charlemain*, in whoſe time by a Synod of Clergy and Laity it was decreed that Tythes ſhould be gathered by ſelected perſons, to pay the Biſhops and Presbyters: So neither can I find any *Saxon* National conſtitution to ſettle this duty, till *Alfred*'s time, although the Church-men had them as a voluntary gift (ſo far as touched the *quota pars*) for the ſpace of well nigh a hundred years before. But *Alfred* made a National Law under a penalty to inforce this duty, which the Canon could not wring from the *Saxons*, how dreadful ſoever the cenſure proved. And by this means the Church had their remedy by Eccleſiaſtical cenſure for the matter in fact, and alſo the civil Magiſtrate the cogniſance in point of right, albeit future times introduced a change herein.

Tythes.

Synod Durien. cap. 7. An. 785. Rabban epiſt. ad Hadubrand

Concil. Brit. p. 277.

CHAP XV.

A brief Cenſure of the Saxon *Prelatical Church-Government.*

THis that I have ſaid might at the firſt view ſeem to repreſent a curious ſtructure of Church-policy, which might have put a period to time it ſelf; but (to ſpeak *ſine ira & ſtudio*) the height was too great, conſidering the foundation, and therefore ever weak, and in need of props. The foundation was neither on the Rock, nor on good ground, but by a Ginn ſcrewed to the *Roman* Conſiſtory, or like a Caſtle in the Air hanging upon a pin of favour of Kings and great men. At the firſt they thought beſt to temporiſe, and to hold both theſe their

strings to their bow: but feeling themselves somewhat underpropped by the consciences of the ignorant people, they soon grew wondrous brave, even to the jealousie of Princes; which also was known so notoriously, that the publick Synods rang that the Prelates loved not Princes, but emulated them, and envied their greatness, and pursued them with detraction. And if the Cloth may be judged by the List, that one example of *Wilfrid* Archbishop of *York* will speak much. He was once so humble minded as he would always go on foot to Preach the Word; but by that time he was warm in his Archbishops Robes, he was served in Vessels of Gold and Silver, and with Troops of followers, in such Gallantry as his Pomp was envied of the Queen. A strange growth of Prelacy in so small a space as Eighty years, and in the middest of stormy times, such as then afflicted this poor Countrey: But this is not all, for never doth pride lead the way, but some other base vice follows. I will not mention the lives of the Monks, Nuns and other Clerks; *Malmsbury* speaks sufficiently of their Luxury, Drunkenness, Quarrelling and Fighting: Others witness thereto, and tell us that the Clergy seldom read the Scripture, and did never Preach; and were so grossely ignorant, that *Alfred* the King being a diligent Translator of Latine Writers into the *Saxon* Tongue, rendreth this reason, because they would be very useful to some of his Bishops that understood not the Latine Tongue. Nor were the Presbyters of another die; for that King bewailing their ignorance, in his Letter to *Wolfegus*, saith, that those which were *de gradu spirituali* were come to that condition that few of them on this side *Humber* could understand their common prayers, or translate them into *Saxon*; and so few, as I do not (saith he) remember one on this side the *Thames* when I began to reign. And the Synod that should have salved all, covers the sore with this Canonical plaister, that those of the Clergy that could not say *Domine miserere* in Latine, should instead thereof say, *Lord have mercy upon us* in English. It was therefore a vain thing for the Clergy to rest upon their works, or title of Divine right; Their great Pomp, Sacred places, and favour of Kings commended them to the Administration, or rather Adoration of

Concil. Brit. p. 254. An. 747.

Malmesb. gest. pontif. lib. 3. An. 680.

Boniface epist. ad Cuthertum. An. 745.

Concil. Brit. p. 3. 9.

Concil. Brit. p. 248. & 253. An. 747.

igno-

ignorant people, and the favour of the *Roman* chair unto the regard of Kings; who maintained their interest with the Conclave on the one side, and with the people on the other side by their means; and so they mutually served one another. It cannot be denied but the Pope and Kings were good Cards in those days; yet had the Prelacy maturely considered the nature of the *Saxon* Government, so much depending upon the people, they might have laid a more sure foundation and attained their ends with much more ease and honour. I commend not the base way of popularity by principles of flattery; but that honourable service of truth and vertue which sets up a Throne in the minds of the vulgar, few of whom but have some sparks of nature left unquenched; for though respect may chance to meet with greatness, yet Reverence is the proper debt to goodness, without which we look at great men as Comets whose influence works mischief, and whose light serves rather to be gazed upon, than for direction.

The foundation thus unhappily laid, the progress of the building was no less irregular in regard of their ends that they aimed at: For first, they admitted the Laity into their Synods; who were not so dull but could espie their ambition, nor so base spirited as to live in slavery after conviction: This errour was espied I confess, but it was too late; and though they reformed it, yet it was after Four hundred years labour, and in the mean time by the contentions of the Clergy amongst themselves, Kings had first learned so much of their Supremacy, and the Laity so much of their liberty, as they began to plead with the Clergy, and had brought the matter to issue, before the Synod could rid themselves of these Lay-Spectators, or rather Overseers of their ways and actions. A second errour, was the yoking of the Bishops power under that of the Synods. For they had little or no power by the Canon that was not under their controle, neither in admission or deprivation of Presbyters or others, determining of any cause, nor passing sentence of excommunication: and this could not but much hinder the hasty growth of Antichrist's power in this Kingdom; nor could it ever be compleated so long as the Synods

Cantab. 1. 2. c. 2, 3.

Synods had the chief power. Nevertheleſs the inthralled ſpirits of the Clergy, and terror of the Papal thunderbolt, in continuance of time ſurmounted this difficulty, and Synods became ſo tame and eaſily led, as if there had been but one Devil to rule amongſt them all. For if any quick eye, or active ſpirit did but begin to peep or ſtir, the *Legate e latere* ſoon reduced him into rank, and kept all in awe with a *Sub pœna* of unknown danger. A third errour, was the allowing of peculiars and exemptions of Religious Houſes from ordinary juriſdiction; and this was an errour in the firſt concoction, a block in the way of Prelacy, and a clog to keep it down. This errour was ſoon felt, and was occaſion of much mutiny in the body Eccleſiaſtical: but exceeding profitable for *Rome*, not only in point of Revenue by the multitude of appeals, but eſpecially in maintaining a party for the *Roman* See, in caſe the Prelacy of *England* ſhould ſtumble at the Supremacy of *Rome*. Otherwiſe it ſeemed like a Wen upon the body, rather than any *Homogene* Member, and without which certainly the Engliſh Prelacy had thriven much better, and the *Roman* chair much worſe. In all which regards I muſt conclude that the Prelatical Government in *England* was as yet like a young Bear not fully licked, but left to be made compleat by time and obſervation.

CHAP XII.

Of the Saxons *Common-weal, and the Government thereof; and firſt of the King.*

HAving already treated of the *Saxon* Church, in order I am now come to the Republick, which in all probability will be expected to be ſuitable to their original in *Germany*, whereunto having relation, I ſhall firſt fall upon the perſons and degrees abſtractively, then in their Aſſemblies, and laſtly of their Laws and cuſtoms. The *Saxons* in their firſt ſtate in *Germany* were diſtributed into four Claſſes, *viz.* the Nobles, the free-men, the manumitted perſons, and the bond-men.

Under

Under the Nobility, and from them, arose one that was called a King, of whom I shall speak a part: the two last differed only in the bare liberty of their persons, and therefore may be comprehended under one head, as they were in their original.

A King amongst the *Saxons* in probability was anciently a Commander in the field, an Officer *pro tempore*, and no necessary Member in the constitution of their state; for in time of peace, when the Common-wealth was it self, the executive power of the Law rested much in the Nobility: but in times of War, and in publick distractions they chose a General, and all sware Obedience unto him during the War; it being finished, the General laid down his Command, and every one lived *æquo jure propria contentus potestate*. But in their transmigration into *Britain*, the continuance of the War causing the continual use of the General, made that Place or Office to settle and swell into the condition of a King; and so he that was formerly *Dux* became *Rex*, there being no more difference in the nature of their places than in the sense of the words, the one signifying to lead, the other to govern; so as he that formerly was a servant for the occasion, afterwards became a servant for life, yet clothed with Majesty, like some bitter Pill covered with Gold, to make the service better tasted. Nor was the place more desirable, if duly considered. For first, his Title rested upon the good opinion of the Free-men; and it seemeth to be one of the best Gems of the Crown for that he was thereby declared to be most worthy of the love and service of the people. Yet was the ground of their Election so uncertain, as a man might imagine that sometimes there appeared more of the will than of the judgment in it; that it might be said to be the more free, for they neither excluded women nor children further than present occasions lead them. The West-*Saxons* deposed *Seburg* their Queen, because they would not fight under a woman; but the *Mercians* obeyed *Elfled* their Queen, and under her fought valiantly with good success against the *Danes*; imitating the custom of the *Sitones* or *Norwegians* in *Germany*; as they might borrow it from the *Lacedemonians*. A Custom it was so much the more

Widikum gest: Saxon. lib. 1.

M. Westm. An. 602.

M Westm. An 912, 919.

Tacit.

Cragius.

more honourable, by how much it demonſtrateth freedome, and that the worth of the people reſted not ſo much in the head, as it's diffuſed through the whole body. And it ſeemeth to run in the blood of an *Engliſh*-man, even to this day, to be as brave under a ſingle Queen, as under the moſt valiant King, if not much more: and ſtill to ſtrive to be as famous for the defence of Majeſty wherever they ſet it, as the *Britons* were of old: Nor were they different in their reſpect of age from that of the Sex; for though after the death of *Edmond*, *Edwin* or *Edgar* were to have ſucceeded in the Crown by the right of deſcent, yet the States would not admit them, becauſe they were Minors; but the *Mercians* admitted *Kenelme* a child of Seven years old to be their King. They likewiſe excluded not Baſtards till the Clergy interpoſed; for they having wound themſelves into the Councils of the Kingdom, procured a conſtitution to back them in the Election of Kings Legitime, *&c.* Let the Kings be legally choſen by Prieſts and Elders, and not ſuch as as are begotten by Adultery or Inceſt: Which conſtitution was made in a Legatine Council, and confirmed by great *Offa*: The rule of their Election was the ſame with that in *Germany*, *viz.* to Elect the chiefeſt out of the chiefeſt family, that is, the chiefeſt for worth, not by deſcent; yet the honour they bare to their brave Kings who had deſerved well, made ſome to honour their poſterity, and to chuſe their eldeſt after their deceaſe, and ſo in time Crowns were taken up by cuſtom, and Election oftentimes ſubſequent was accounted but a ceremony, unleſs the people will diſpute the point.

Mag. cent. 8 cap. 2. An. 747.

Tacitus.

Secondly, this Election was qualified under a ſtipulation or covenant, wherein both Prince and people were mutually bound each to other; the people to defend their King, which the Hiſtorian ſaith was *præcipuum Sacramentum*; and the Prince to the people to be no other than the influence of the Law ſutable to that ſaying of *Æthelſtan* the *Saxon* King, ſeeing I according to your Law allow you what is yours, do you ſo with me; as if the Law were the ſole umpire between King and people, and unto which not only the people, but alſo the King muſt ſubmit. The like whereunto *Ina* the great *Saxon* King alſo, no great man, ſaith he, nor any other in the whole King-

Tacitus.

Concil. Brit. p. 397.

Ll. Ina. Lamb.

Kingdom may abolish the written Laws. Kings furthermore bound themselves (at their entrance into the Throne) hereunto by an Oath; as it's noted of *Canutus*, unto whom after *Æthelbred* was dead, the Bishops, Abbats, Dukes, and other Nobles came and Elected him to be their King, and sware Fealty unto him; and he again sware to them that *Secundum Deum & secundum seculum*, &c. *viz.* according to the Laws of God and of the Nation he would be a faithful Lord to them. It's probable I grant that the *præcipuum Sacramentum* formerly mentioned was in the first nature more personal for the defence of the person of their leader whiles he was their Captain: because it much concerned the good of the Army, and without whom all must scatter, and bring all to ruine; and this the words of the Historian do evidence. But the safety of the whole people depended not on him after the War was done, and therefore the oath tied them not any further; nor did the safety of the people afterwards, when as the *Saxons* entred this Land, so absolutely rest upon the person of the King, especially if he proved unfit to manage the work: and therefore the fealty that the people sware to their King, was not so absolutely determined upon their persons, otherwise than in order to the publick weal, as may appear from the Laws of the Confessor, who was within Thirty years after the Reign of *Æthelstan*, formerly mentioned; The words in English run thus: *All the people in their Folkmote shall confederate themselves as sworn Brethren, to defend the Kingdom against strangers and Enemies, together with their Lord the King; and to preserve his Lands and Honours together with him with all faithfuln ess, and that within and without the Kingdom of* Britain *they will be faithful to him as to their Lord and King.* So as 'tis evident the *Saxons* fealty to their King was subservient to the publick safety, and the publick safety is necessarily dependant upon the liberty of the Laws. Nor was it to be expected that the *Saxons* would endure a King above this pitch. For those parts of *Germany* (whence they came) that had the Regiment of Kings (which these had not) yet used they their Kings in no other manner than as servants of State in sending them as Embassadors and Captains, as if they claimed more interest in him

Miror cap. 1. sect. 1.

Wigorn. An. 1016.

Tacitus.

than he in them: and the Hiſtorian ſaith expreſly, that amongſt thoſe people in *Germany* that had Kings, their Kings had a defined power, and were not *ſupra libertatem.* And this Maxim of State became afterwards priviledged by Sanctuary: for by the growth of Antichriſt, not only the Clergy, but even their Tenants and Retainers were exempt from reach of Kings, and even by their own conceſſion allowed of a Law that cut the throat of their indefined prerogative *viz.* That if the King defend not his people, and eſpecially Church-men from injury, *nec nomen Regis in eo conſtabit, verum nomen Regis perdit.* Which Law however it might paſs for currant Divinity in thoſe days, yet it's ſtrange it ſhould get into a publick act of State. Nor was this a dead word, for the people had formerly a trick of depoſing their Kings (when they ſaw him peep above the ordinary reach) and this was an eaſie work for them to do, where ever neighbouring Princes of their own Nation watched for the windfals of Crowns: This made the Monarchical Crown in this Land to walk circuit into all parts of the Countrey to find heads fit to wear it ſelf, until the *Norman* times.

Ll. Sax. Ed. cap. 17.

M. Weſtm. An. 756. 758. Wigorn. An. 755.

Thirdly, the *Saxons* had ſo hammered their Kings in their Elections, and made them ſo properly their own, as they claimed an intereſt not only in the perſon of their Kings, but alſo in their Eſtates, ſo as in ſome reſpects they were ſcarcely *ſui juris.* For King *Baldred* had given the Mannor of *Malings* in *Suſſex* to *Chriſt-church* in *Canterbury*; and becauſe the Lords conſented not thereto, it was revoked, and King *Egbert* afterwards made a new grant by advice of the Lords; which ſhews that the Demeſnes of the Crown were holden ſacred, and not to be diſpoſed of to any other uſe, though pious, without the conſent of the Lords: and herewith concur all the *Saxon* infeodations, atteſted and confirmed by Biſhops, Abbots, Dukes, and others of the Nobility under their ſeveral hands.

Concil. Brit. 340.

Nevertheleſs Kings were not then like unto plumed Eagles expoſed to the charity of the Fowls for food, but had a Royal maintenance ſuitable to their Majeſty; their power was double, one as a Captain, an other as a King; the firſt was firſt, and made

made way for the second; as Captain, their power was to lead the Army, punish according to Demerits, and according to Laws; and reward according to Discretion. As Captain, they had by antient custom the spoil left to their ordering by permission of the Army, *Exigunt Principis liberalitate illum bellatorem equum, illam cruentam & victricem frameam*; and they were not wont in such cases to be close handed (*per bella raptus munificentiæ materia*) the spoils in these wasted parts of *Germany* being little other than Horses and Arms. But after they came into *Britain*, the change of soil made them more fat; Horses and Arms were turned into Towns, Houses, Lands, and Cattel; and these were distributed as spoils amongst the *Saxon* Souldiers by their Generals, and this redounded to the maintenance of the State and port of the great men, who were wont to be honoured *non stipendiis sed muneribus*, and the people used *ultro & viritim conferre principibus vel armentorum vel frugum aliquid*; but now upon the distribution of conquered Towns, Houses, Lands, and Cattel in *Britain* a yearly product of Victuals or other service was reserved and allowed to the *Saxon* Kings by the people, as the people allowed to *Joshua* his Land, *Jos.* 19. 46. So as they needed no longer the former course of Offerings, but had enough to maintain their Royal port, and great superfluity of Demesnes besides; as their charity to the Church-men does sufficiently evidence: and by this means all the Lands in *England* became mediately or immediately holden of the Crown, and a setled maintenance annexed to the same; besides the casual profits upon emergencies, or perquisites of Fellons or Fugitives goods, mines of Gold and Silver, treasure trove, mulcts for offences, and other priviledges, which being originally in the Kings were by them granted, and made Royalties in the hands of Subjects as at this day.

Tacitus.

Tacitus.

Mirror. 101. 158
Ll. Edw. cap. 4

To the increase of Majesty and maintenance there was an access of power, not to make, dispense with, or alter Laws, but to execute and act the Laws established: and against this power there was no rising up so long as it like an unfethered Arrow gadded not at random. It's true the Church-men or Prelates checked them often, but could never give them the

mate. For peace sake Kings many times yielded much; yet would no King of *Saxon* principles allow of any Canon that extolled the Clergie's Authority above that of Kings: and though the placing and displacing of Bishops seemed to be all Ecclesiastical work, yet would not the Kings altogether connive: as the examples of *Ina* in placing a Bishop in *Wels*, *Offa* in making two Provinces of one, *Cenulphus* in restoring *Polyderus*, *Edfrid* in deposing *Wilfrid*, and *Edward* the Confessor in making *Robert Norman* Archbishop of *Canterbury* may induce into opinion; and for their own safety sake the Prelats thought it wisdom for them sometimes to stoop to that power that at other times they must be beholding to; and therefore though in Synodical disputes they would hold with the Canon, yet in matters of action would suit with the occasion, and thereby taught Princes to account of Canons but as Notions; and politickly to put the honour of Commissioners upon these men: thus the current of both powers passing in one chanel made the people drink double Beer at once; the turns both of Pope and King were competently served, and these men had the honour of the two-handed Sword; and all seemed composed into a fair compromise. But the Popedom finding its Authority becalmed indured this but as a burden, till Pope *Nicholas* the seconds time, who by the like trick commended all to the Crown, as from the Papal Benediction. For *Edward* the Confessor upon his foundation of the Abby of *Westminster* sent to the Pope for his allowance, and confirmation of what he had done, or was to do; and to make way for the more favour sent presents, and a confirmation of *Romescot*: The Pope was so inflamed with such an abundant measure of blessing, as he not only granted the Kings desire, but also discharged that Abbey from ordinary jurisdiction, made it a peculiar subject only to the Kings visitation, and concluded his Bull with this horn. *Vobis vero & posteris vestris regibus committimus advocationem & tuitionem ejusdem loci & omnium totius Angliæ Ecclesiarum, & vice nostra, cum concilio Episcoporum & Abbatum constituatis ubique quæ justa sunt.* How the King took the conclusion I find not, but he could never make better use than by way of estoppel, unless he meaned to sacrifice his own

Malmesb. gest. pontif. lib. 2. gest. Reg. lib. 1. cap. 4. M. Paris An. 1095.

Concil. Brit. p. 614. An. 1066.

own right as a thank-offering to a ſhadow, which I find not that he or his next ſucceſſors ever did: but as touching the Laity, Hiſtories do not touch upon any conceit of withdrawing Monarchical power. It's true Kings had their exceſſes, yet all was amended either by the body of the people, when they pleaſed to examine the matter, or by the Princes fair complyance when complaint was made, and ſo the Law was ſaved. And thus upon all the premiſes I ſhall conclude; a *Saxon* King was no other than a *primum mobile* ſet in a regular motion, by Laws eſtabliſhed by the whole body of the Kingdom. LL. Canut. cap. 67.

CHAP. XVII.

Of the Saxon Nobility.

THE antient *Saxon* Nobility in *Germany* were the chiefeſt in action both in War, and in Peace. That rank of men was continued by Three means, *viz.* by Birth or Blood, by valour, and by wiſdom: the firſt was rather at the firſt a ſtem ariſing out of the firſt two, than a different degree or kind: for Noble blood was at the firſt innobled by brave actions, afterward continued in their honour to their poſterity, till by as baſe courſes it was loſt, as it was gained by worthy Atchievements; theſe were called *Adelingi*. The Nobility of action conſiſted either in matters of War or of Peace. Thoſe of Peace aroſe principally from wiſdom, which being gained for the moſt part by much experience, were therefore called *Aldermanni* or elder men. The Nobility of War aroſe ſomewhat from valour or courage with wiſdom, but more from good ſucceſs; for many brave and fortunate Commanders have not been very daring, and the braveſt ſpirits though wiſe, have not been ever honoured with good ſucceſs; theſe were called *Heretochii*. Nevertheleſs all theſe names or titles were uſed promiſcuouſly in following times, and all called *Nobiles*; but both that and *Duces*, *Satrapæ*, and *Comites* were all of the Roman. LL. Edw. cap. 35. Nitard. lib. 4.

man Dialect, as the former were of the *Saxon*. Time also brought others into this Honourable band, *viz.* The great Officers of the Kings houshold, and their attests are found amongst the Kings Charters, amongst the Nobles; And that much advanced the price of Kings; for he that is worthy to be not only Lord above Nobles, but Master of some, may by a little curtesie prevail over all. This starry Heaven had several Orbes: some so high, as in common esteem they were next the Imperial Heaven, having a tincture of Royal blood, and at the next door to the Throne; Others, though not of so clear light, had nevertheless no less powerful influence upon the people, but rather more, by how much more nigher to them. Their power in matters of peace or government of the Common-weal was exercised either collectively or apart and severally. In their meetings they ordered the smaller emergencies of the publick in convocating and directing the people. *De minoribus rebus consultant principes.* These *minora* are such as are subservient to the *majora* and *pro hic & nunc* require sudden order touching any particular part or member of the Common-wealth. At other times they visited their several Territories or circuits, hearing and determining matters of Controversie, and executing Judgment according to the known Laws. *Principes jura per pagos vicosque reddunt.* Yet they had *comites* of the Countrey joyned with them, whereof afterward. This was their course in *German Saxony*; but in *England* the new stem of Kingly power arising higher than all the rest sucked much from them, and kept them under: for the judiciary power was in time drawn up into the Regal order, and the Lords executed the same as Deputies from and under him, designed thereto by Writs and Commissions, as it's more particularly noted of King *Alfred*. The Lords thus lessened in their judiciary power, carried the less Authority in their Votes and Consultations. The King was a perpetual Moderator in that work, and it was no small advantage he had thereby to sway the Votes. Men that are advanced, if they have any excellency, soon gain admiration; and it's a hard thing for one that hath yielded his heart to Admiration, to keep it from adoration. This hath mounted up Kings to the top more

Tacitus.

Tacitus.

Tacitus.

Miror. cap. 5. Sec. 1.

more than their own ambition, and made them undertake what they ought not, becauſe we eſteem more highly of them than we ought. I ſpeak not againſt due, but undue Obedience; for had the *Saxon* Lords remembred themſelves, and the true nature of the Authority of their King, they needed not to be amazed at their check, nor to give way to their paſſion, as they did many times, and adviſed others to do the like. Nor had Kings by degrees become beyond controll and uncapable to be adviſed. This errour the Lords eſpied too late, and ſometimes would remember their antient right and power, and did take boldneſs to ſet a Law upon the exorbitancy of their King, as in that caſe of *Æthelwolf* and his Queen amongſt others may appear: but that was like ſome enterpriſes that owe more to extremity of occaſion than to the courage of the undertaker.

Concil. Brit. p. 313.

M. Weſtm. An. 854.

CHAP. XVIII.

Of the Freemen amongſt the Saxons.

THe next and moſt conſiderable degree of all the people, is that of the Freemen called antiently *Frilingi* or free born, or ſuch as are born free from all yoke of Arbitrary power, and from all Law of compulſion other than what is made by his voluntary conſent; for all free men have Votes in the making and executing of the general Laws of the Kingdom. In the firſt they differed from the Gauls, of whom it's noted, that the Commons are never called to Council, nor are much better than ſervants. In the ſecond they differ from many free people and are a degree more excellent being adjoyned to the Lords in judicature, both by advice and power, *conſilium & authoritas adſunt*; and therefore thoſe that were elected to that work were called *Comites ex plebe*, and made one rank of free men for wiſdom ſuperiour to the reſt: Another degree of theſe were beholding to their Riches, and were called *Cuſtodes Pagani* an honourable title belonging to Military ſervice; and theſe were ſuch as had obtained an eſtate of

Caſ. Com. lib. 6.

Tacitus.

Lamb. in 4. fo. 72.

of such value as that their ordinary Arms were a Helmet, a Coat of Mail, and a guilt Sword: The rest of the free men were contented with the name of *Ceorles* or *Pagani*, *viz.* Rural clowns, who nevertheless were the most considerable party both in War and Peace: and had as sure a title to their own liberties, as the *Custodes pagani*, or the Countrey Gentlemen had.

CHAP XIX.

Of the Villanies amongst the Saxons.

THe most inferiour rank amongst the *Saxons* were those that of latter times were called Villains; But those also antiently divided into two degrees, the chiefer of which were called *Free-lazzi*. These were such as had been slaves, but had purchased their freedom by desert; and though they had escaped the depth of bondage, yet attained they not to the full pitch of free men; for the Lord might acquit his own title of bondage, but no man could be made free without the act of the whole body. And therefore the Historian saith, that they are not *multum supra servos*, or scarce not servants. They are seldom of account in any family, never in any City. But in Kingdoms sometimes advanced above the free men, yea above Nobles. Those are now adays amongst the number and rank of such as are called coppy-holders, who have the priviledge of protection from the Laws, but no priviledg of Vote in the making of Laws.

Tacitus.

The most inferiour of all were those which were antiently called *Lazzi* or slaves; those were the dregs of the people, and wholly at the will of their Lord to do any service, or undergo any punishment; and yet the magnanimity of the *Saxons* was such as they abhorred Tyranny: and it was rarely used amongst them, by beating, torture, imprisonment, or other hard usage, to compel them to serve; they would rather kill them as Enemies; and this wrought Reverence in these men towards their Lords, and maintained a kind of generosity in their

Tacitus.

their minds, that they did many brave exploits, and many times not only purchased their own freedom, but also brought strength and honour to the Kingdom. And though the insolency of the *Danes* much quelled this *Saxon* Nobleness, yet was it revived again by the Confessors Laws which ordained that the Lords should so demean themselves towards their men, that they neither incur guilt against God, nor offence against the King; or which is all one, to respect them as Gods people and the Kings Subjects. And thus much of the several degrees of men amongst the *Saxons*, being the materials of their Common-weal; a model whereof in the making and executing of the Laws and manner thereof, now next ensueth.

CHAP. XX.

Of the grand Council of the Saxons *called the Micklemote.*

IT was originally a Council of the Lords and Free men; afterwards, when they assumed the title of a Kingdom the King was a Member thereof, and generally president therein, but always intended to be present, though actually and in his own person by emergent occasions he may be absent, and sometimes by disability of his person he be unmeet to Vote or be President in such an Assembly: as it was in the Council at *Clano* or *Cleve* in *Wiltshire*, when the great case between the Monks and married Priests was concluded; the King was absent, as the story saith, because of his minority, and yet if writers say true, he was then in the Sixteenth year of his age. The Lords were also nevertheless in the same condition of priviledg as formerly, and though it appeareth that the Kings had gotten the priviledg of summoning the grand meeting in his own name, yet it was by advice of the great men, and being met their votes were no other in value than as formerly; for all their Laws were *ex consilio sapientum*, and for ought can appear out of antiquity the vote of the meanest continued as

Tacitus.

Malmesb. gest. Reg. lib. 2. cap. 9. Lib. 5. An. 978.

Tacitus. good as of the greateſt, *arbitrium eſt penes plebem.* And thus the *Micklemote* or *Wittagenmote* of the *Saxons* in *England* continued in the King, Lords, and Free men by the ſpace of One hundred and fifty years, and in ſome parts of *England* nigh Two hundred years before ever the *Roman* Biſhops foot entered, or the *Roman* Clergy crept into the Councils of State. Afterwards the Prelates were admitted *de bene eſſe*, for advice, as *ſapientes*, and continued by allowance; how Canonically *ipſi viderint*, for I underſtand it not, eſpecially as the Scripture was then expounded, *Nemo militans Deo implicet negotiis ſæcularibus*: yet if they be allowed (what in thoſe days they ordinarily took up) a degree of policy above devotion, that knot is alſo ſoon untied. I ſay they entered as *Sapientes*, not as *Prelati*, or Church-governours; for then they had holden the ſame power in Church-matters agitated in the *Wittagenmot* that they had uſurped in their Synods, which they held only for Church-viſitation, which they could never have, becauſe the *Sapientes regni* had their Votes therein as freely as they. Nor could the Prelates by any Law entitle themſelves to ſuch power or priviledg, ſo contrary to the priviledg of the *Wittagenmote*. For though it be true that the *German Prieſts* had a liberty to be preſent in theſe grand Aſſemblies, and to have ſome preſidency therein, as to command ſilence, *&c.* Yet it's no title to Tacitus. theſe, unleſs they will intereſt themſelves as their Succeſſors, to poſſeſs by a *jus Divinum* that *jus Diabolicum* (which thoſe Prieſts formerly had) in a way of immediate providence; ſomewhat like the poſſeſſion of the mantle of *Eliah* found by *Eliſha*. They might, I grant, plead the title from Kings; but it muſt be granted alſo that Kings as yet had no more power over the Church than in the Common-wealth. Nor could they have that from the Lords which the Lords never had, but was ever accounted amongſt the *majora*, and of which the *Wittagenmote* had the only cogniſance, as it will appear in ſome particulars enſuing.

Unto the King, Lords, and Clergy muſt be added, as I ſaid, the Freemen, to make up the *Micklemote* compleat; and though it be true that no monument of ſtory ſpeaks of this grand meeting from their being in *Germany*, until after the coming

ing of *Austin*; yet when as the *Saxon* Histories then find them in the same condition that the *German* story leaves them, it's very probable that in the interval they continued their wonted custom, although they had no Learning to leave monuments thereof unto the world. And hereof the examples are not rare in those remembrances that those ancient times have left us. For within six years after *Austins* arrival *Æthelbert* calls a Common Council *tam cleri quam populi*. *Ina* after him made Laws *suasu & instituto Episcoporum omnium senatorum & natu majorum sapientum populi*; *in magna servorum Dei frequentia*. *Alfred* after him reformed the former Laws *consulto sapientum*. After him *Æthelstan* called a Council, in which was the Archbishop, and with him the *Optimates & sapientes frequentissimi* besides others, whereof I shall treat now that I come to the matters handled in this Court.

Concil. Brit. 1. 6. Ll. Sax. Lamb. Cantab. fo. 2 Ibid. fo. 22. Ibid fo. 53.

The matters in agitation in the *Wittagenmot* generally were all both of publick and private concernment. That which concerned the publick were such as regarded removal of inconveniences, such as are Laws for leagues and affinity with other Nations for preventing of War; and thus became the *Saxons* and *Britons* United, and the mortal feud between those two Nations laid aside, and they made one; and the *Saxons* and *Danes* reconciled by a Covenant agreed unto, and sworn between both Nations. The like also may be said of their making of War of defence against Forrain invasion. Matters of publick and general charge also were debated and concluded in that Assembly, as the payment of Tithes, it's said they were granted *Rege Baronibus & populo*. Such also as concerned the Church; for so *Edwin* the King of *Northumberland* upon his marriage with a Christian Lady, being importuned to renounce his Paganism, answered he would so do, if that his Queens Religion should be accounted more holy and honourable to God by the wise men and Princes of his Kingdom. And all the Church Laws in the *Saxons* time were made in the *Miklemote*. Monasteries were by their general consent dedicated, and their possessions confirmed. The City of *Canterbury* made the Metropolitane, matters also of private regard were there proceeded upon, as not only general grievances, but perverting

Concil. Brit. p. 219. Ll. Lamb. Cantabr. fo. 34.

Ll. Edw. Lamb. Cant. fo. 139.

Antiq. Brit. p. 51.

Concil. Brit. 127. Ibid. 3: 1.

of justice in case of private persons: as in that Council called *Synodale concilium* under *Beornulfus* the Mercian King, *quæsitum est quomodo quis cum justitia sit tractatus, seu quis injuste sit spoliatus*. The name of which Council called Synodal mindeth me to intimate that which I have often endeavoured to find out, but yet cannot, *viz.* that there was any difference between the general Synods and the *Wittagenmot*, unless merely in the first occasion of the summons. And if there be any credit to be allowed to that book called, *The Mirror of Justices*, it tells us that this grand Assembly is to confer of the Government of Gods people, how they may be kept from sin, live in quiet, and have right done them according to the Customs and Laws; and more especially of wrong done by the King, Queen, or their children; for that the King may not by himself or Justices determine causes wherein himself is actor; and to sum up all, it seemeth a Court made to rise and stoop according to occasion.

Ibid. 332.

Cap 1. Sec. 3.

Sec. 2.

Cap. 4. Sec. 11.

The manner of debate was concluded by vote, and the sum taken in the grosse by noise; like to the *Lacedemonians*, who determined what was propounded *clamore non calculis*; yet when the noise was doubtful, they took the votes severally. The meeting of the *Saxons* at this Assembly in the first times was certain, *viz.* at the new and full Moon. But Religion changing, other things changed these times to the Feasts of *Easter*, *Pentecost*, and the Nativity; at which times they used to present themselves before the King at his Court, for the honour of his person, and to consult and provide for the affairs of his Kingdom; and at such times Kings used to make shew of themselves in their greatest pomp, Crowned with their Royal Crown. This Custom continued till the times of *Henry* the second, who at *Worcester* upon the day of the Nativity offered his Crown upon the Altar, and so the Ceremony ceased.

Tacitus. Plut. Lycurg. Thucyd. lib. 1. de Lacedem.

Tacitus.

An. 1158.

This grand Assembly thus constituted was holden sacred; and all the members, or that had occasion therein, were under the publick faith both in going and coming, unless the party were *fur probatus*. If a Member were wronged, the delinquent payed double damages, and fine to the King, by a Law

Law made by *Æthelbert* above a Thousand years ago. This priviledg of safe pass being thus ancient and fundamental, and not by any Law taken away, resteth still in force. But how far it belongeth to such as are no Members, and have affairs nevertheless depending on that Court, I am not able to determine; yet it seemeth that priviledg out-reacheth members: unless we should conceit so wide, that the state did suppose that a member might be a notorious and known Thief. Concil. Brit. p. 127. Ll. Canut. p. 2. cap. 79. Ll. Ed. cap. 35.

Lastly, this assembly though it were called the *Wittagenmot*, or the meeting of wise men; yet all that would come might be present and interpose their liking or disliking of the proposition, *si displicuit sententia fremitu aspernatur, si placuit frameas concutiunt*; and some hints I meet with, that this course continued here in *England*; for some presidents run in *magna servorum Dei frequentia*, as that of *Ina*: *commune concilium seniorum & populorum totius regni*: another Council by him holden. The Council of *Winton*, *An.* 855. is said to be in the presence of the great men, *aliorumque fidelium infinita multitudine.* And it will appear that it continued thus after the *Norman* times: what power the vulgar had to controll the Vote of the wise men, I find not; *fremitu aspernabantur* it's said, and probably it was a touch of the rudeness of those times; for it was not from any positive Law of the Nation, but a fundamental Law in nature that wise men should make Laws: and that the supream judicature should rest in the *Wittagenmot*, was never an honour bestowed upon it by the *Saxons*, but an endowment from the light of reason, which can never be taken away from them by that headless conceit *provoco ad populum*, but that body must be as monstrous as the *Anthropophagi* whose heads are too nigh their belly to be wise. Ll. Sax. Lamb. p. 1. Concil. Brit. 219. Ingulfus.

CHAP.

CHAP. XXI.

Of the Council of Lords.

THis in the first condition was a meeting only of the Lords, for direction in emergent cases, concerning the government and good of the Common-weal; and for the promoting of administration of justice: these the Historian calls *Minora*, because they were to serve only the present passions of State. Afterwards when they had gotten a King into their number, they had so much the more work as might concern due correspondency between him and the people, and of themselves towards both. This work was not small, especially in those times of the growth of Kings, but much greater by the access of Prelates into their number, with whom came also a glut of Church affairs, that continually increased according as the Prelates ambition swelled, so as this Council might seem to rule the Church alone in those days; when as few motions that any way concerned Church-men, but were resolved into the Prelatical cognisance, as the *minora Ecclesiæ*: and thus under the colour of the *minora Ecclesiæ*, and the *minora Reipublicæ*, this mixt Council of Lords came by degrees to intermeddle too far in the *magnalia Regni*. For by this means the worshipping of Images, and the Masse was obtruded upon the *Saxons* by the *Roman* Bishop and his Legate, and the Archbishop of *Canterbury*; and decreed that no Temporal or Lay person shall possess any Ecclesiastical possessions. That elections of Ecclesiastical persons and officers shall be by Bishops. That the possessions of Church-men shall be free from all Lay service and Taxes. And in one sum they did any thing that bound not the whole body of the Free men. In which had these Lords reflected more upon the office, and less upon the person, and not at all upon their private interest, they doubtless had been a blessing to their generations, and a Golden Scepter in the hand of a Righteous King; but contrarily missing their way they became a Sword in the Kings hand against

Mag. cent. 8. cap. 9. An. 712. Concil. Brit. p. 189. An. 694.

against the Subjects, a snare to the Kingdom, and had not the *Wittagenmot* in their meeting allayed those distempers, the *Saxon* Government had been little other than a Common-weal reversed.

CHAP. XXII.

Of the manner of the Saxons *Government in time of War.*

AS the condition of States or Kingdoms are diversly considered in War and Peace, so also must their Government be: for however War in it self be but a feaverish distemper in a Common-weal, yet in some cases it is as necessary as a kindly ague in due season is for the preservation of the body; which many times takes distemper rather from the excellency of its constitution than from the abundance of humours. Nor did the temper of the *Saxon* Common-weal ever shine more than in War, whiles it set a Law upon that which ordinarily is master of all mis-rule and confusion, and so fought by rule rather than by passion. Their chief in the first times was chosen by the Freemen in the field, either at the *Wittagenmot* or the *Folkmot*, according to the extent of his command, being carried upon a sheild born upon their shoulders like as now Knights of the shire are. This Emblem they entertained him with, to declare their trust in him, and the work that was expected from him. His first Title was *Heretock*, afterwards he was called Duke or *Dux*, the latter whereof turned to a bare Title in the conclusion; but the former maintained its own honour, so long as the name lasted. After his election all sware to be at his Order, and not to forsake him: this was a trick of imbased times; for though the *Lacedemonian* Law was positive, that none should flie or break his rank, but get the victory or dye, yet were they neither bound by Oath or penalty: shame in those times being accompted worse than death by those brave minds. But times growing more old grew also more base-spirited, and could not be (drawn into the field) holden.

Tacitus. Ll. Ed. cap. 35.

Tacitus.

holden in rank by Oathes or honour; and this occaſioned that Law of *Ina* the *Saxon* King that in ſuch caſe a Countrey Gentleman ſhould be fined One hundred and twenty ſhillings if he were landed, but if otherwiſe, Sixty ſhillings, and the Yeoman Thirty ſhillings, and afterwards the penalty was increaſed to the forfeiture of all the eſtate of the delinquent. In their Wars they went forth by bodies collectively as they were united by the law of pledges; this made them ſtick cloſe together for the honour of their families and friends, and rendered their encounters mortal, and to the worſted party commonly fatal: for once beaten in the field they could hardly recover either by rallying or gathering a new Army. Probable it is that the Lords might have their villains to follow them in the Battail, but the ſtrength conſiſted of the Freemen; and though many were bound by tenure to follow their Lords to the Wars, and many were Voluntiers, yet it ſeems all were bound upon call under peril of fine, and were bound to keep Arms for the preſervation of the Kingdom, their Lords, and their own perſons, and theſe they might neither pawn nor ſell, but leave them to deſcend to their heirs, and in default of them to their Lord, and in default of him to their chief pledg, and for want of ſuch to the King. They muſtered their Arms once every year both in Towns and Hundreds, *viz*, the morrow after *Candlemas*; and ſuch whoſe bodies were unfit for ſervice were to find ſufficient men for ſervice in their ſtead. They were ſtrict in their Diſcipline, if they followed their rule which was made not by the arbitry of the General, but by Parliament. Theſe amongſt other ſcattered principles concerning Sea-affairs, may ſerve to let us know that the Law-Martial, and that of the Sea were branches of the Poſitive Laws of the Kingdom, ſetled by the general Vote in the *Wittagenmot*, and not left to the will of a lawleſs General or Commander; ſo tender and uniform were thoſe times both in their Laws and Liberties.

Ll. Sax. Lamb. Cantab. 10.

Concil. Brit. p. 528. An. 1009.

Tacitus.

Ll. Ed. cap. 35.

Ll. Canut. cap. 58.

CHAP.

CHAP XXIII.

Of the government of the Saxon Kingdom in times of peace; and first of the division of the Kingdom into Shires, and their Officers.

IF the Saxon government was regular in time of war, how much rather in time of peace? All great works are done by parcels and degrees, and it was the Saxons ancient way in *Germany*, to divide their Territory into several circuits or circles, and to assign to each their several Magistrates, all of them ruled by one Law; like one soul working in several members to one common good. Thus they did here in *England*, having found the Land already divided into several parts called *Comitatus* or Counties, from the word *Comes*, that signifies a Companion; and the Counties thence called are nothing but societies or associations in publick charge and service. But the Saxon word is shire or share, that is a portion or precinct of ground belonging to this or that person, or great Town, and bearing the name of that person or Town; and sometimes of the scituation of the people, as North or South folk, East or South Sex or Saxons. This division by the names seems to be of Saxon original, and though by the testimony of *Ingulfus* and other Writers, it might seem to be done by *Alfred*; yet it will appear to be more ancient, if the Reader mind the grant of *Peter*-pence made by King *Offa*, wherein is recorded the several Dioceſſes and Shires, out of which that grant was made under the very same names that they own at this day: and that was more ancient than *Alfreds* time by the space of 80. years. Seld. Tit. Hon.

M. Westm. An. 794.

Each of these Shires or Counties had their two chief Governours for distributive justice; of these the Sheriff was more ancient and worthy Officer, being the Lieutenant, and aided by the power of the County in certain cases: for his Commission extended not to leavy war, but to maintain Justice in Sheriffs.

that County, and within the ſame; and in this work he was partly miniſterial, and partly judicial: in the one he was the Kings Servant to execute his Writs; in the other he regulated the Courts of juſtice under his Survey. He was choſen in the County Court called the *Folkmote*, by the Votes of the Freeholders, and as the King himſelf, and the *Heretock* were intituled to their honour by the peoples favour.

Ll.Edw.c.35.

Coroners.

The Coroner, though in original later, was nevertheleſs very ancient: he was the more Servant or Officer to the King, of the two. His work was to enquire upon view of Man-ſlaughter, and by Indictment of all Felonies as done *contra coronam*, which formerly were only *contra pacem*, and triable only by appeal. And alſo he was to inquire of all eſcheates and forfeitures, and them to ſeize. He was alſo to receive appeals of Felonies, and to keep the rolls of the Crown pleas within the County. Its evident he was an Officer in *Alfreds* time; for that King put a Judg to death for ſentencing one to ſuffer death upon the Coroners record, without allowing the delinquent liberty of traverſe. This Officer alſo was made by election of the Freeholders in their County Court, as the Sheriff was, and from amongſt the men of chiefeſt rank in the County, and ſworn in their preſence, but the Kings Writ lead the work.

Miror. cap. 1. Sect. 13.

Miror. p. 300.

Fits N. Br. 163, 164.]

CHAP. XXIV.

Of the County Court, and the Sheriffs Torne.

THe government of the County in times of peace conſiſted much in the adminiſtration of juſtice, which was done in the publique meetings of the Freeholders: and their meetings were either in one place, or in ſeveral parts of the County: in each of which the Sheriff had the mannaging of the acts done there. The meeting of the Free-men in one place was called the *Folkmote* by the Saxons (ſaving the judgment of the honourable reporter) *Coke Inſtit.* 2. p. 69. and of latter times

Folkmote or County-court.]

times the County Court: the work wherein was partly for consultation and direction concerning the ordering of the County, for the safety and peace thereof, such as were redress of grievances, election of Officers, prevention of dangers, &c. and partly it was judicial, in hearing and determining the common pleas of the County, the Church affairs, and some trespasses done therein, but not matters criminal, for the Bishop was Judge therein, together with the Sheriff, and by the Canon he was not to intermeddle in matters of blood: yet neither was the Bishops nor Sheriffs work in that Court, other than directory or declaratory; for the Free-men were Judges of the act, and the other did but *edocere jura populo*; yet in special cases upon petition, a Commission issued forth from the King to certain Judges of *Oier*, to joyn with the others in the hearing and determining of such particular cases. But in case of injustice or errour, the party grieved had liberty of appeal to the Kings Justice. Nor did the Common Pleas originally commence in the County Court, unless the parties dwelt in several Liberties or Hundreds in the same County: and in case any mistake were in the commencing of suits in that Court, which ought not to be, upon complaint, the Kings Writ reduced it to its proper place; and in this also the Kings own Court had no preeminence. In those ancient times this County Court was to be holden but twice a year by the constitution of King *Edgar*; but upon urgent emergencies oftner, and that either by the Kings special Writ, or if the emergent occasions were sudden and important by extraordinary summons of ringing the Mootbels. Unto this Court all the Free-men of the County assembled to learn the Law; to administer Justice, to provide remedy for publick inconvenience; and to do their fealty to the King before the Bishop and Sheriff upon Oath; and in the work of administring Justice, causes concerning the Church must have the precedency; so as yet the Canon Law had not gotten footing in *England*.

Miror. p. 147.

Ll. Canut.
Miror. cap. 1. Sec. 15.

Miror. cap. 5. Sec. 1.

Ll. Canut.
Ll. Edgar.

Concil. Brit. p. 197. tit. 22.

Ll. Edw. cap. 35.

Ll. Edw. cap. 35

Ll. Edw. cap. 4.

The other Court wherein the Sheriff had the directory, was in the meeting of the Free men in several parts of the County; and this was anciently, and now is called the Sheriffs Torne; which simply considered, is but a Hundred Court, or the

Sheriffs Torne.

Miror. cap. 1. Sec. 16. Sheriffs Torne to keep the Hundred Court. It was ordered to be kept twice every year, *viz.* at the *Lady-day* and *Michaelmas*, or soon after: unto this Court all the Free-holders of the Hundred repaired, and there they, the Bishop and Sheriff executed the same power and work for kind, that they did in the County Court. In this Court all the suits in the Hundred Court depending, had their determination, and others had their commencement and proceedings, as well the pleas of the Crown as others. Some have conceived it to be a County Court, or superiour thereto; but there being no ground thereof, I conceive it to be no other than a visitation of the County by parcels or in circuit.

Ll. Edgar. cap. 5. Ll. Edw. cap. 35. Ll. Canut. p. 2. cap. 17.

CHAP. XXV.

Of the Division of the County into Hundreds, and the Officers and Court thereto belonging.

COunties were too great to meet upon every occasion; and every occasion too mean to put the whole County to that charge and trouble: and this induced subdivisions; the first whereof is that of the Hundred now, and also anciently so called, but as ancient (if not more) is the name *Pagus*; for the Historian tells us that the Germans, in the executing of their Laws, a hundred of the Free-men joyned with the chief Lord *per pagos vicosque*, which first were called *Centenarii*, or Hundreders from their number, but used for a title of honour like the *Triarii*: And as a second hereunto, I shall add that testimony of the Council at *Berkhamsted*, which speaking of the reduction of suits from the Kings Court *ad pagi vel loci præpositum*, in other places its rendred to the governours of the Hundred or Burrough. And at this day in *Germany*, their Country is divided into circuits called *centen* or *canton*, and *centengriecht*, and the *Hundredere* they call *Centgraven*, or Hundred chiefes, whether for government in time of peace, or for command in time of war; the latter whereof, the word *Wa-*

Tacitus.

Cluer. lib. 1. cap. 19.

pentake

pentake, doth not a little favour. Amongſt theſe one was *per eminentiam*, called the *Centgrave*, or Lord of the Hundred, and thereunto elected by the Free-men of that Hundred, and unto whom they granted a ſtipend in the nature of a rent, called *Hundredſettena*, together with the government of the ſame. The diviſion of the County in this manner, was done by the Free-men of the County, who are the ſole Judges thereof, if *Polydores* teſtimony may be admitted: and it may ſeem moſt likely that they ruled their diviſion at the firſt according to the multitude of the Inhabitants: which did occaſion the great inequality of the Hundreds at this day. The government of the Hundred reſted at the firſt upon the Lord and the Hundredars; but afterwards by *Alfred* they were found inconvenient, becauſe of the multitude, and reduced to the Lord or his Bailiff, and twelve of the Hundred; and theſe twelve were to be ſworn neither to condemn the Innocent, nor acquit the Nocent. This was the Hundred Court, which by the Law was to be holden once every moneth; and it was a mixt Court of common pleas, and Crown pleas: for the Saxon Laws order, that in it there ſhould be done juſtice to Thieves; and the trial in divers caſes in that Court is by ordeale. Their Common-pleas were caſes of a middle nature, as well concerning Eccleſiaſtical perſons and things as ſecular, for the greater matters were by Commiſſion, or the Kings Writ removed, as I formerly obſerved: all Free-holders were bound to preſent themſelves hereat. And no ſooner did the Defendant appear, but he anſwered the matter charged againſt him, and judgment paſſed before the Court adjourned, except in caſes where immediate proof was not to be had; albeit it was holden unreaſonable in thoſe daies to hold ſo haſty proceſs: and therefore the Archbiſhop of *York* prefers the Eccleſiaſtical or Canonical way before this. Laſtly, in their meeting, as well at the Hundred as County Court, they retained their ancient way of coming Armed.

Malmesb. Reg. geſt. p. 54.

Ll Alured cap. 4.

Ll. Edw. 35. Ll. Æthelstan. 20.

Ll. Edw. cap. 32.

Ll. Ætheldr. cap. 1. Lindenbrog. Ll. Allm. & Saxon.

Concil. Brit. p. 273. Tacitus. Gloſſar. 155.

CHAP.

CHAP XXVI.

Of the Diviſion of the Hundreds into Decennaries.

THis was the laſt ſubdiviſion of the County, and that reſted upon the perſons; and it was either not at all, or not ſo obſervable as to be worthy of the Roman ſtory, and therefore may rather be thought an extract from *Moſes* Law, introduced by *Alfred* or his direction. I ſay this reſted on the perſons, and not upon the place; for though the Centeners were comprehended with certain bounds; yet the Decenners were not limitted but only within the limits of the Hundred. And of theſe alſo it appeareth to me there were divers ſorts; for ſuch matters of controverſie that did ariſe amongſt the Decenners, if of greater moment, were referred to the chiefer Juſtices, which were appointed *ſuper decem decanes*, which I conceive were ten chief pledges; and theſe might bear the names of the Centeners, although they be not the *Centgraven*; and the rather I incline thereto, becauſe in all probability there
Ll. Canut. c. 19 muſt needs be above one hundred Free-holders in *Hundredo*, and all free men were Decenners, that is ranked into ſeveral tens; each one being pledge for others good abearing, and in caſe of default, to anſwer it before the judge; and in caſe of default of appearance, his nine pledges ſhould have one and thirty daies to bring the delinquent forth to juſtice. If this failed, then the chief of thoſe Decenners by the votes of that and the Neighbour Decenners, was to purge himſelf and his fellow pledges, both of the guilt of the fact, and of being parties to the flight of the delinquent. And if they could not this do, then were they by their own Oaths to acquit themſelves, and to bind themſelves to bring the delinquent to juſtice as ſoon as they could, and in the mean time to pay the damage out of the Eſtate of the Delinquent: and if that were not ſufficient, then out of their own Eſtate; but if the delinquents Eſtate was ſufficient, the ſurpluſſage thereof, remained with the pledges. And laſtly, the

Maſter

Master of the Family was a pledge for his whole Family. This was the Law of Decenners, and may seem to be somewhat a rigorous Law, not only in case of delinquency, but also for their abode, for none of them might depart from their dwelling without consent of his fellow pledges, nor out of the County without allowance of the Sheriff, or other Governour of the same. And if any controverlie arose between the pledges, the chief pledge by them chosen, called also the Dean or Headburrough may determine the same; but this held only in matters of lighter consequence.

Ll. Edw. cap 15. Ll.Canut.c.28.

Ll. Alured cap. 13. Ll.Canut.p.2. cap. 15.

Ll.Edw.c.20.

CHAP XXVII.

Of Franchises: and first of the Church Franches.

WE have hitherto trode in the rode-way of the government of the Common-weal: but private regards have made by-paths, which we must trace, or else the footsteps in many particulars will remain unknown. These are called Exemptions, but more ordinarily Francheses, from which scarce any part of the Kingdom remained free; and are to be considered, either in regard of the place or person. In the latter I intend that of the Church-men, whose Persons and Estates in many particulars were exempted from the civil power of this Kingdom. Their persons devoted to a peculiar work, they would have to be under a peculiar Law, called the Canon Law; which at the first extended only to their own persons, and that only *pro reformatione morum*: for so an Archbishop tells us, that it did teach *quomodo Canonici id est regulares Clerici vivere debent*; but when it grew to its full charge it gave a louder report, *Quicunque aliquid tenuerit vel in fundo Ecclesiæ mansionem habuerit extra curiam Ecclesiasticam non placitabit quamvis foris fecerit.* And thus as Church-ground increased by the blind charity of those times, so long Church-men multiplied, and the Canon inlarged from the persons of regulars to all Clergy-men, and from them to their Tenants and Neighbours;

Concil. Brit. p. 258.

Ll.Edw.Conf.

from

from thence to certain Spiritual or Eccleſiaſtical crimes or ſcandals, wherever they were found, and wherever it touched, it took and bound by Excommunication, and upon *ſignificavit*, being firſt delivered to Satan, they delivered him over to the ſentence of the Law, to be impriſoned. If the offender be out of reach by the ſpace of thirty and one daies, he is outlawed; ſo as there's no way left to eſcape the Church fury.

Ll. Edw. cap. 7.

CHAP. XXVIII.

Of the ſecond Franches called the Marches.

FRanchiſes of the place were ſuch as were limitted within precincts of place, and annexed thereto; and of this ſort firſt were thoſe of the borders, of which thoſe are the moſt ancient that bordered the *Britons*, now called the marches of *Wales*, in which was a peculiar government, ſo far as concerned adminiſtration of juſtice; for otherwiſe the ſubjects each of them ſubmitted themſelves to the ſervice of their own Prince. This was therefore a third, different, and mixt government, agreed upon joyntly between the *Britons* and *Saxons*, who after a long and burdenſome war, wherein both peoples were well wearied, by degrees became Friends, entered traffick, and into the ſtricteſt ſocieties by Marriage. Thus finding the ſweetneſs of peace, they provide againſt future occaſions of ſtrife that might ariſe in commerce by the juſtling of two Laws together, and agree in one Law, and upon a certain number of Judges elected by common conſent, who were to ſee to the execution of theſe Laws as joynt Aſſeſſors. From theſe as I conceive, aroſe thoſe which are now called the Lords marchers, and were at the firſt twelve in number, *viz.* ſix *Saxons* and ſix *Britons*. It ſeemeth this form of government was firſt inſtituted by *Æthelbred*, and by way of preſcription or cuſtom, continueth till this day: and as it was the birth of truce, ſo for the future became both Mother and Nurſe of peace between thoſe two peoples, like the twi-light between the day and night, until both were brought under one head, and by divine providence ſetled in a laſting day.

Ll. Æthelb. cap. 3.

CHAP.

CHAP. XXIX.

Of County Palatines.

OF the same sort of Francheses were these which are called County-Palatines, which were certain parcels of the Kingdom assigned to some particular person, and their successors, with royal power therein to execute all Laws established, in nature of a Province holden of the Imperial Crown: and therefore the Kings Writ passed not within the precinct no more than in the Marches. These were occasioned from the courage of the Inhabitants that stoutly defended their liberties against the usurping power of those greater Kings that endeavoured to have the Dominion over the whole Heptarchy, and not being easily overcome, were admitted into composition of tributaries; and therefore are found very ancient: for *Alfred* put one of his Judges to death for passing Sentence upon a Malefactor, for an offence done in a place where the Kings Writ passed not: and the same Author reciting another example of his justice against another of his Justices, for putting one to death without president, rendreth the Kings reason, for that the King and his Commissioners ought to determine such cases; excepting those Lords, in whose precinct the Kings Writ passeth not. Miror. cap. 5. Sec. 1.

CHAP. XXX.

Of Francheses of the Person.

FRancheses of the person are such liberties annexed unto the the person as are not absolute Lordships, but only tending thereto, and limited within a Precinct, but not annexed thereto: and these are matters of profit rather than power; as those of *Bury* St. *Edmonds*, *Doncaster*, *Dorchester*, *Circester*; all Miror. cap 5.

which were in the Saxon times: and these or some of them had juridical power in cases of Felonies and Robberies arising within that precinct, so as the delinquent was both inhabitant and taken within the same; this was called *Infangtheoff*, and if upon fresh pursuit made by the right owner or possessor, the Delinquent was taken with the prey in his possession, or as the old Dialect is *Handbaben Backbearend*; Then was he carried immediately before the Coroner of that liberty, and the Sakeber or party wronged, made his proof by Witnesses; and thereupon judgment forthwith passed without answer, and execution immediately ensued. Some Liberties had *Outfangtheoff*, that is, the trial and forfeiture of such Delinquents, being no Inhabitants, and yet taken within the liberty, or Inhabitants, and not taken within the liberties; but this trial was alwaies by Jury. The antiquity of these Liberties are not obscurely manifested in their names, and more clearly by the Saxon Laws and Acts; for its observed of *Alfred*, that he seised a Franches of *Infangtheoff*, because the Lord of that Franches would not send a Felon (taken within his liberty for a Felony committed without the same) to the Goale of the County, as he ought to have done. Other Liberties there were granted also by Charter; a tast whereof may be seen in one grant made by King *Edgar*, to the Monastery of *Glastenbury*, wherein was granted *Sack*, *Hamsockne*, *Friderbrece*, *Forstel*, *Teme*, *Flemone*, *Ferdre*, *Hundred Setene*, *Sock*, *Tholl*, *Adæ*, *Horda*, *Bufan Orderan*, *Bene Orderan*, the particular natures of each may be observed in the Glossaries; All of them being allowed to the Crown by the Law, and by the advice of the Council of Lords granted over to these Grantees in nature of Deputies to the King, to possess both the power and profit thereto belonging.

Infangtheoff.

Ll. Edw. cap. 26.

Outfangtheoff.

Bracton. lib. 3. tract. 2. cap. 35

Briton. cap. 15.

Ll. Edw. cap. 21.

Miror. cap. 5. Sec. 1.

CHAP.

CHAP. XXXI.

Of Manors.

NEvertheleſs moſt of theſe liberties, if not all of them were many times granted by Kings as appendent to Manors; which were Franchiſes of ſmaller circuit, being at the firſt portions of ground granted to ſome particular perſons, and by them ſubdivided and granted over to particular perſons to hold off the Grantors by Rents, Services, and ſuit to one Court, all being no other than the ſpoiles of war, and rewards of valour, or other ſervice. Theſe in their collective nature are called a Manor, and by continuance of time become a kind of body politick. In antiquity its called *Manſium* from the Manſion-houſe, although it is not of the Eſſence of a Manor, nor ought the words of *Bracton* to be conſtrued according to the literal ſenſe; for the houſe may be deſtroyed, and yet the Manor continue; and the ground was granted in tenure before any houſe built thereupon. The quantity of the ground thus given to hold by Service, was according to the pleaſure of the Lord more or leſs, and therefore might extend into divers Pariſhes, as on the other part one Town might comprehend divers Manors. The Eſtate that was granted depended partly on the condition of the Grantee: for ſome were *ſervi* or Bond-men, and their Eſtate was altogether at the will of the Lord, as was alſo the benefit; but the Servants merit, and the Lords benignity concurring with ſome Conſcience of Religion, as the light grew more clear, abated the rigour of the tenure into that which we now call Copyhold. Other Eſtates were made to the Free-men, which in the firſt times were only for years; albeit therein they were not niggardly, for they ſticked not at Leaſes for a hundred years, yet with a render of rent, which in thoſe daies was of Corn or other Victual; and thence the Leaſes ſo made were called *Feormes*, or Farmes, which word ſignifieth Victuals: But times enſuing, turned the Victual into Money, and terms of years

Bracton. fo. 212.

Fleta. lib. 4. cap. 15.

Ingulfus Croyl.

to terms of life and inheritance, retaining the rents, and thoſe called Quit rents, or the rents of thoſe perſons that are acquitted or free. But in caſe of eſtates of inheritance for the moſt part after the death of the Tenants were reſerved Heriots or a relief: which were not left to the will of the Lord, but was put in certainty, in the very letter of the Law: for according to each mans degree, ſuch was his relief or heriot.

Gloſſ. 1 58. Ll. Saxon. 16, 17. Lamb. Gloſſ. 348. Ll. Canut. p. 1. cap. 69.

But over and above all, they reſerved ſpecial ſervice to be done by the perſon of the Tenant, or ſome other by his procurement, of which thoſe that were their *ſervi* or villains were at the will of the Lord: others had their particular ſervice ſet down in their grants. Theſe concerned either War or Peace; the former was afterwards called the ſervice of the Knight or Souldier; the latter the ſervice of the Husbandman or Plough. That of the Souldier was the more honourable, and ſuitable to the old German trade; *Pigrum & iners videtur ſudore acquirere quod poſſis ſanguine parare:* and the work was to defend the Kingdom, the Lords perſon and Honour; and to this end he was ever to have his weapons in readineſs, which gave name to the ſervice, and altered as times and cuſtoms changed. This ſervice by cuſtom from a work degenerated into the bare Title, and became a dignity; and the men named, or rather entituled *Milites:* and many of the Saxon Charters were atteſted by men bearing that Title; yet the ſervice it ſelf was far more ancient, and called *ſervicium loricæ*, of which ſort alſo were the *Cuſtodes pagani* that wore a Helmet, a coat of Mail, and a guilt Sword: not unlike the old German way of calling forth of their *Tirones* to the War. Of this rank ſome were more eminent than others; for ſome bare the ſingle title of Knight, and it ſeemed ſerved on foot: others ſerved on horſeback, and were called Rad-knights, or Knights riders, as *Bracton* noteth; and theſe I take to be the *Vavaſours*, noted in the Conquerours Laws: for that their relief is a Helmet, a Coat of Mail, a Shield, a Spear, and a horſe, Now for the maintaining of this ſervice, They had Lands and Tenements called Knights Fees, which bound the owner to that ſervice, into whoſe hands ſoever they came, to be done either by the perſon of the owner or other fit perſon by him procured, and

Knight-ſervice.

Tacitus.

Selden. Spicil.

and therefore were discharged from the payment of all Taxes and Tollage, which was the Law of the *Goths* of old, and remains in *Sweden* at this day. The number of these Fees much increased, so as in the Conquerours time they were above sixty thousand, which was a mighty body for a small Island, and brought much honour to the Nation. Co. Litlet. 75. Burcus.

But the profit arose from beneath, I mean from the soccage tenure or service of the Plough, which in the first times was performed by those that were unfit for the service of the wars, either being green and young, or decrepit and aged; and sometimes by the Women. But after that the Saxon conquest was at a stop, and that no more was to be gotten by blood, men endeavoured to satisfie their desires by sweat, and turned their Swords into Plough-shares; and thus the Husbandry increased exceedingly, and hath proved the best Pillar of the Commonweal: the nature of this tenure is fully set out by the Reporter, nor can I add thereto more than the Law of the Confessor concerning these men, *viz.* that no man might trouble them, but for their Rent, nor any Lord thrust them out of their Farm, so long as they do their service; and thus it appeareth that the service became in nature of a condition subsequent, begetting an increaser of the Estate, which by continuance wrought an inheritance, and so the Title of Entry was turned wholly into distresses for service not performed; yet the Lord was no loser thereby, so long as Heriots, Rents, and Services accrewed unto him. *Soccage tenure.* Tacitus. Co. Litlet. fo. 86. Ll. Edw. c. 33. Spiceleg. Ll. Edw. c. 3.

CHAP. XXXII.

Of Courts incident and united unto Manors.

BY grants made by Lords unto Tenants already noted, the Lords had power by common right to call their Tenants before them, and enquire concerning their payment of Rents, and performance of service, which became Courts of constant appointment: of which sort there were two, one for the Freemen, the other for the Bond-men; and this brought forth another

Court-leet. other ſervice, which we call ſuit of Court. The Court of Free-men was holden from three Weeks to three weeks, wherein the Free men, as in the Hundred and County, were Judges of the fact, and from them named, as at this day, Court-leet, or the Court of the Liti, of ſuch as are manumitted or Free-men. In this Court all Actions or Suits between the Free-men of the ſame Manor, and within the ſame ariſing, were determined; nor could any Court (no not the Kings) intermeddle with ſuch Suits before trial had; but by the Lords allowance: And upon this priviledge the Writ of right patent was grounded. But the full nature of this Court is not within my intention, but I muſt refer the Reader to the Law-books. For it was the leaſt part of the work and power which this Court obtained by continuance of time; in regard that manors exceedingly multiplied, ſo as no part of the Land was left free; and many one of them extended into divers Decennaries, the Lords obtained great power over them, and had of Kings grants of view of Frankpledge within their ſeveral Lordſhips; and further power of inquiry, and puniſhing of matters of publick nuſance, and ſuch as were *contra pacem & coronam*; which by cuſtom became annexed unto the Court-leet. The nuſances of Copy-holds being done to diſheriſon of the Lord, and not proper for the Court of publick inquiry. The Judg of this Court-leet was the Lord, or his Steward, for the directory part; and the Steward was properly Coroner within the Manor to take preſentments, and certifie them to the Coroner of the County. And thus this Court ſwallowed up much of the power of the Decenners Court in the very infancy, ſo as we find no foot-ſteps of any Writ of Right to the Decenners or chief pledges, but contrarywiſe many views of Frank pledge granted to particular perſons in the time of *Alfred:* and many things done by the chief pledges in the Courts of theſe Manors, as is to be yet ſeen in many ancient Court Rols.

Miror. p. 17. Lind. gloſſ. Albin. hiſt. Saxon. p. 72.

F. N. Br. 2.

View of Frank-pledge.

Miror. cap. 5. Sec. 1.

Court-Baron. The other Court, which by common right belonged to the Lords of Mannors, was that of the Copy-holders, called or rather included under the name of the Court Baron, which albeit it is called in the ordinarily ſtile *Curia Baronum*, yet not ſo properly as I conceive, and it may be by way of miſtake for *Baronis*

Baronis: for if it were so properly united formerly to the Court of Free-men, as *ab excellentiori*, it alwaies passed under that name; yet when that Court is omitted and slipt out of the way, the Court of Copy-holders that remaineth, improperly retaineth the name of that which is gone. This Court at the first was intended only for the Lords benefit, and for the Tenants right, as subservient thereunto; I say the Tenants right, not against their Lord, for they had no right against him, but against any other they had protection of Law, both for themselves and their Estates; and as I said before, by custom, or rather light of Religion, their persons and Estates were considerable, even by the Lords themselves, which also caused a Law to be made *ut sic de suis hominibus agant quatenus erga Deum reatum non incurrant & Regem non offendant*: which law could never be intended of the Free-holders; for it had been a vain redundancy to have made an especial Law for that, which was provided for by the known fundamental Law of the Kingdom, against which a speedy remedy lay by the Kings Writ. And that these men, how mean soever, had even in those daies a kind of property both in Lands and goods; for the Laws, though by their antick language darkned, yet plainly speak *de terra sua & Catallis ejus*; and if the ancient Germans were so generous to their Bond-men, surely much rather after their coming into this Island, in as much as their service was more, and more necessary in *agriculture*, which could never be performed by the Natives, who were not in their own persons conquered, although their Land was.

Co. Instit. cap. 57.

Ll. Edw.

Selden. Spicil. 184. cap. 33.

CHAP. XXXIII.

Of Townships and their Markets.

THe next Francheſe is that of Towns; this was taken up as a birth of war and nurse of peace; for their Ancestors liked not to dwell in crowds, *ne pati quidem inter se junctas sedes*: it being their trade or pastime to war upon beasts, when.

Tacitus.

when they found no Enemies amongst them. This solitudinary custom could not be soon shaken off, and might well occasion multitudes of Towns in those times (though small ones doubtless) that writers speak of; if true it be, that after the wasting times of the *Danes* and *Normans* in the Conquerours time were found in *England* forty-five thousand Parishes, and sixty-two thousand Villages. Nor was peace less beneficial to them than they careful of it; for by continuance of Peace, Husbandry, Manifactures, and Commerce occationed people to gather to places commodious for habitation in good soil, nigh Navigable Rivers or Havens, and according to their scituation and trade, so they swelled in multitude or decayed, some of whom growing more eminent than others, more care was had of their government and safety; for the latter by building of Walls and Castles, and for the former by setling a Magistracy peculiar to that place or Township; not as so many Decenners, but as one body consisting of many members; and thus by custom they grew to be Fraternities, or Corporations under one Magistrate or head, whom they called Aldermen; and held a Court of Justice (at the first holden twice a year) which was in nature of a Leet with a view of Frank pledge, as may appear in the cases of *Dorcester*, *Circeter*, and *Doncaster*, in *Alfreds* time; and herewith they had publique markets which served them for their better coveniences

Ll.Canut.c.44. Miror. cap. 5. Sec. 1.

Markets.

This priviledge of Market was a liberty of publique sale and trade in commodities that principally concern the belly, but by common course became a pass for commodities of everykind almost. Concerning this liberty I shall desire leave to interpose this parenthesis ensuing before I proceed in the intended discourse.

In the first times as every man by common right had property in his own goods, so by the same right he had power to alien to any person, at any time, in any place, by gift, sale, exchange, or other waies; and that by such alienation, but especially by sale a right was vested in the buyer against all men (saving the Eignee right which was recompenced upon warranty and recovery in value) and in those daies common sense taught men to buy or sell, of or to the next neighbour that

that would bargain with them: and for want of such occasion to repair to the next assembly, meeting, or concourse of people, for the sale of such commodities as their neighbourhood would not take off their hands. And thus the greater Towns that had walls or Castles became the greatest Markets, and others less; and this made the neighbourhood of those Towns to repair thither to buy, as others to sell. But time discovering a double inconvenience herein, *viz.* that by these less publique sales in smaller Villages, where little or no care of right or justice was had (and by which means the word Pagan became a word of reproach) many mens goods by clandestine contracts were lost, and no care had of their recovery; and (which was yet more prejudicial to the publique) that the greater Towns appointed for the strength and defence of the Kingdom became ill provided with supply of Victual, either for the present or future; and what was had, for the most part was gotten at the second hand, and higher rate than the Countrey Villages had. The wise men by publique edict laid a restraint of Markets in smaller Villages, and more private places; and thus the greater Towns having Markets formerly became more publique Markets, not by any new right or priviledge from the Crown (for it neither had such power nor could have, but upon usurpation) against the common right of such Towns and places of publique defence. This restraint upon the reasons aforesaid, was made first in the *Saxon* times, as may appear by their Laws, but more clearly declared and confirmed afterwards by the Laws of the *Normans*, which never gave any new right of Market overt unto those places of publique defence, but only did inhibit the same in the smaller Villages and private places. In which respect although the Kings of this Nation in future times took leave to abolish that restraint which did lie upon some of those more private places for certain reasons of State; and so these places became Markets overt which formerly were none; yet could they never take away that priviledge which nature it self cast upon those greater Towns being the very limbs of the Kingdom without wrong done to the common right and the publique good: nor abridg them of that power, but that

they might ſtill uſe their liberty at times and places within their precinct, as might beſt conduce with the benefit of the inhabitants of thoſe places, even as any particular free man may govern his own eſtate as him liketh beſt. And thus upon the whole matter its to be concluded, that the ancient Burroughs of this Kingdom properly do not hold their liberty of Market overt by preſcription or Charter, but by common right, and not as a Corporation made by Charter; but as they are a multitude of people anciently gathered together and united, upon whom the ſtrength and wealth of the Kingdom doth or did formerly much more depend than on any of the ſmaller Villages and open Towns; even as every free man poſſeſſeth and uſeth his proper inheritance and eſtate without particular priviledg derived from the Crown: nor can the King take away the liberty of Market overt from ſuch places, more than he can take away the liberty of buying and ſelling from any free man, to whom the Law alloweth a liberty of ownerſhip. This I ſubmit to the cenſure of the learned in the Laws, in regard of the different opinions concerning the ſame.

This liberty of Townſhip thus made, and the place and people, inhabitants thereof being of ſuch conſequence in the publique adminiſtration, had for their better ſupport and ſafety liberty of Fortification, and power to charge one another with the maintenance of the Fortifications by an impoſition called Burghbote, and held their Tenements under a rent to their Lord or King called Burgage, as they were a body aggregate.

LL. Edw. cap. 1. LL. Æthelſt. cap. 12. LL. Æthelſt. cap. 13. Gloſs.

CHAP. XXXIV.

Of the Forreſts.

BEſides other prerogatives of the *Saxon* Kings, they had alſo a Franchiſe for wild beaſts for the Chaſe, which we commonly call Forreſt, being a precinct of ground neither parcel of the County, nor the Dioceſs, nor of the Kingdom, but

but rather appendant thereunto. This ſavoured of the old *German* ſport, but by cuſtom turned from ſport to earneſt. For although in the firſt times the *Saxons* were ſo few, and the Country ſo ſpacious, that they might allow the beaſts their farm as well as themſelves their own; People nevertheleſs ſo multiplied, as of neceſſity they muſt intercommon either with Beaſts or Fiſhes: the former whereof, however more cleanly, yet the latter had the ſureſt footing, and was choſen as the leaſt of two evils, rather than for any likelihood of good neighbourhood: for as nature taught Beaſts to prey for themſelves, ſo men to defend their own; and this bred ſuch a fewd between Beaſts and men, as that Kings doubting to loſe their game, took in with the weaker, that the world might ſee the happineſs of *England*, where Beaſts enjoy their liberty as well as men. But this was, as it were, by compromiſe; for it had been very hard to have pleaſed the freemen, who had liberty of game within their own ground by common right, and to preſerve the Kings liberty of Forreſt coincident therewith, had not the King imployed on the one ſide the power of a *Dane* that looked ſomewhat like a Conquerour, and on the other ſide that which looked as like to the bounty of a King, in allowing liberty of ownerſhip to men inhabiting within the bounds of the Forreſt, which at the firſt was ſet apart only for the Kings pleaſure: and all his wits to make a Law ſomewhat ſhort of a full freedom, and yet outreaching that of bondage, which we ſince have commended to poſterity under the Forreſt Charter; and yet for all that it proved a hard matter for Kings to hunt by Law; and the Law it ſelf a yoke ſomewhat too heavy for a Common-wealth to bear in old age, if ſelfdenying Majeſty ſhall pleaſe to take it away.

LI. Canut. c. 77.

CHAP. XXXV.

Concerning Judges in Courts of Justice.

THus far of the several Tribes and numbers of this Common-weal, which like so many Conduit heads derived the influence of Government through the whole body of this Island; and in every of which Judiciary power acted it self in all causes arising within the verge of that precinct; some of which had more extraordinary trial before the King and his Council of Lords according as the parties concerned were of greater degree, or the cause of more publique concernment. Examples hereof are the cases between the Bishop of *Wincheſter* and *Leoſtin* in *Æthelbreds* time; and between the two Bishops of *Wincheſter* and *Durham*, in *Edwards* time: but custom made this Court stoop to smaller game in later times, and to reach at the practice of the County Court, by sending the Kings Writs to remove certain causes from the cognisance of those rural judicatories to their sublime determination. And thus became the Council of Lords as an Oracle to the whole Nation, and the King amongst the rest, as the Priest that many times rendred the answer or sentence of that Oracle in his own sense, and had it confirmed to him by an oath *se judicium rectum in Regno facturum & justitiam per concilium procerum regni sui tenturum*; so as, though he was the first in view, yet the Council of Lords was the first in nature, and the Cynosure to direct his tongue and actions.

Glanvil. lib. 6. cap. 6. 7, 8.

Ll. Edw. ca. 16.

From this Fountain issued also streams of judicature into all parts by Judges *itinerant* under the Kings Commission to reform errors, punish defaults in the ordinary rural judicatories, and to dissolve hard and knotty cases; and these were occasioned at the instance of the party: and *Alfred* (whose birth this was) sent them forth in way of Association with the Sheriff, Lord of the fee, or other ordinary Magistrate.

Miror. cap. 5. Sec. & cap. 1. Sec. 3.

CHAP.

CHAP XXXVI.

Of the proceeding in Judicature by Indictment, Appeal, Preſentment, and Action.

FOr the preceedings in courſe the *Saxons* were wont to begin with matters belonging to the Church, and afterward to ſecular cauſes; in which if the matters were criminall the moſt ancient way of proceeding was by appeal of the party complaining; but afterward in caſes that concerned damage, injury, or violence done to the body of a man or his eſtate, the King was found to be therein prejudiced, beſides the prejudice immediatetly done to the Subject; for a man diſabled in body or eſtate is diſabled to ſerve the King and publique; and upon this ground a way was found out to puniſh the offender by indictment, beſides the ſatisfaction done to the party wronged. The proceedings againſt ſuch delinquents were by attachment of the party, who thereupon gave pledges for his appearance. If the party could not be found, a *fugam fecit* was returned, and that was a conviction in Law, and purſuit was made after the party by hue and cry. If he was thereby taken, the ancient way was that of *Halifax* Law; but in latter times he was impriſoned, or admitted to bail if the offences were bailable; and if the party bailed made default, or did not abide the trial, his bail ſuffered as principal: If no bail could be procured, the delinquent was impriſoned till he was legally acquitted; but this impriſonment was only in nature of reſtraint. If the delinquent was found upon the huy and cry, and would not yield himſelf, he was in repute a common enemy, and (as a wolf) any man might kill him; as the Law was alſo the ſame in caſe of Utlary. At the time of tryal (if at the Kings ſuit) the delinquent was indicted in this manner by any party preſent: *I. D. C. do ſay for the King, that I. S. is defamed by good men; that he upon — day of — &c. into the houſe and goods of — did caſt fire, and the ſame did burn:*

Indictment.

Lambert. Ll. Inæ. 15.

Ll. Inæ. Lam. fo. 7. L. Alured. cap. 6. Miror. c. 2. Sec. 24. Ll. Edw. cap. 4. Miror. p. 255. Gloſs. 335. Miror. cap. 5. Sec. 9. & 10. Ll Edw. cap. 7. Ll. Canut. cap. 45. Miror. cap. 2. Sec. 23.

or

or (if it were for bloodſhed) *with a Sword did ſtrike and wound him in the left arm, and that this was done felonioſly*, or (if the caſe required) *trayterouſly; and if I. S. deny the ſame, I will for the King prove the matter againſt him, as the King ought to do*; that is to ſay, by witneſſes, and twelve men. But if the complaint was at the ſuit of the party, then the proſecutor ſued him upon Appeal, in manner following; *I. C. appealeth D. H. here preſent, for that E. Father, Brother, Son, or Uncle* (according as the caſe was) *to I. C. being in the peace of God, and of our Soveraign Lord the King at the dwelling houſe of E. at—&c. the ſaid D. H. upon the—day of—in the —year of—with a Sword made a wound of two inches long, and ſix inches deep in the left pap of the body of the ſaid E. whereof he died; and this was done felonioſly, and of malice forethought. And if the ſaid D. H. ſhall deny the ſame, the ſaid I. C. is ready to prove the ſame againſt him in his body, or as a Monk, woman, or Clerk, behooveth to prove the ſame*, that is, by Champion; for neither Monk, Woman, nor Clerk was by Law to juſtifie by Battail in their own perſon. The ſeveral cauſes of appeal and indictment may be found in the Law books, to whom I refer the reader, it not being within the compaſs of this diſcourſe to fall upon the particulars; I ſhall only obſerve the difference between indictmens former and later, and between them and appeals, *viz.* that appeals are poſitive accuſations in the name of the proſecutor of the fact done by the party appealed; whereas indictments were only a publication or affirmation of the fame of a fact done by the party indicted, and wherein not guilty pleaded, ſerved only as in nature of a Quere, to uſher in the votes of the free men.

Appeal. Miror. cap. 2. Sec. 15.

Concerning the fact, ſecondly, the difference between former Indictment from theſe in theſe days, conſiſts in this, that the ancient Indictments were in the name of one man; thoſe of the later ſort are in the name of the Jury, and the former were only of a fame, the later of the fact.

A third way of bringing controverſies unto judgment concerned only ſuch matters as were of leſs conſequence; and theſe were introduced by way of preſentment, in the name or behalf of the King, in nature of poſitive accuſe of one for a crime

Miror cap. 2. Sec. 23. *Preſentment.*

crime first laid down generally, and then asserted by a particular fact, in this manner: *I say, for our Soveraign Lord the King, that H. here is perjured, and hath broken faith against the King, because whereas H. is or was Chancellor of the King, and was sworn that he would not sell right, or any remedial Writ to any one: yet upon the —day of —&c. he sold to B. a Writ of Attaint, and would not grant the same under half a Mark*; so as the difference between an Indictment and Presentment in those days was only in the degree of crime for which the party delinquent was accused, and in the manner of conclusion of the Presentment, which was without averment.

The last way of trials concerns such offences that exceed not the nature of trespass done to a mans person or his goods; and this was by way of Action, and it was to obtain recompence for damage sustained. Now because the former were called personal trespasses the Process was by attachment of the person, who thereupon put in bail, or else his person was secured by imprisonment till trial, and satisfaction made; but in the later that concerned the reality, three Summons went forth in the Hundred Court; and if default were made, complaint thereof ensued in the County Court, and thence issued forth a distringas; and if the defendant still persisted in declining his appearance, the distress was forfeited, and a summons issued upon the Land; if then the defendant would not appear, or upon appearance would not give pledges to abide judgment, his whole Land was seized for the benefit of the King, the Lord of the Hundred, and complainant, because he had offended against all three. But if the party appeared in former times, he answered forthwith, and judgment passed without delay, as hath been said; unless in urgent cases, where the matter was raw, and then it was adjourned, and pledges given by the defendant to the full value, after the custom of the Athenians; and if the defendant made default at the day, his pledges were forfeited. But in after times for better and more advised proceeding the defendant was admitted to his Essoines; yet with a proviso, that no Essoine should be allowed for above fifteen daies; and this was the direction of King *Alfred*.

Miror. cap 2. Sec. 24. *Action.*

LL. Æthelbr. cap. 20. LL. Canut. c. 17. Lindenbr. tit. 36.

LL. Edgar. c. 7.

Miror. cap. 5. Sec. 1.

In

Miror cap. 3. Sec. 16

In the answer of the defendant he either traversed the matter in fact, or confessed and justified, or confessed and submitted. The first put the matter to the judgment of the freemen; the second to the judgment of the Judge; the third to the discretion of the complainant, whereby the defendant generally found mercy, and in case of trespas rendred less dammage. I find no footsteps in those times of Dilatorypleas: or demurrer, or other delays, unless in case of infancy; for the *Saxons* knew no other age of ability to do or suffer, but the age above one and twenty years; and in *Alfreds* time a Judg suffered death for passing sentence of death upon one under that age: albeit the Canonists had in those daies brought into custom other ages of ability in matters concerning marriage, although it may well be thought that it requireth no less maturity to manage the affairs of a maried life, than to discern the nature and difference of manners, especially in case of crimes, which are contrary the to very light of nature.

Lindenbr. glosſ.

Miror. cap. 5. Sec. 1.

CHAP. XXXVII.

Of the several manners of extraordinary trial by Torture, Ordeale, Compurgators and Battail.

Torture.

EVidence of the matter in fact, upon trial of causes in the *Saxon* judicatory sometimes consisted in the pregnant testimony of the fact it self, and sometimes in the testimony of some circumstances. The first was an unquestionable ground of conviction; the second was too weak to command the Verdict, although sometimes it perswaded it; and therefore those incompassionate times found out a trick of extorted confession, by torture of the party, following the principles of passion therein, rather than sober judgment: for circumstances are sufficient to irritate the hearts of those that are passionate; and where jealousie is once entered, there's no place for sparing, be the matter never so untrue: yet I do not find any Law amongst the *Saxons* to patronize this fashion of conviction

ction, albeit it seemeth it was practised, for *Alfred* the King punished one of his Judges with death for passing sentence upon an extorted confession by torture before the Coroner; and possibly it might be gained from the *Lacedemonians*, although little to the praise of their Greekish wisdom in that particular. Seeing that in all reason it must be supposed that fear and grief will enforce flattery upon the tormentor, as well as self love draw forth flattery to the benefactor. Miror cap. 5. Sec. 1. Cragius.

A second sort of evidence was that of Ordeale, being also grounded upon a pre-conceit or suspicion: the manner hereof was divers. The thing seemeth to be the birth of the brain of some Church-man who had read of the cursed water. The first mention that I find thereof was at the Council of *Ments*, and afterwards in the Council of *Triers*, but not a footstep thereof in this Kingdom till by *Æthelstan* it was advanced into the degree of a Law; after which time it continued in use well nigh three hundred years. A strange monument of Gods indulgency to an ignorant age thus turning extraordinary to ordinary, for the clearing of innocency; and (which is no less wonderful) allowing in those times unto men under nature such a power over themselves, as to adventure against nature. Doubtless that man or woman was of a daring Spirit that first tried the trick, if he had not a miraculous faith in that promise, *Cum ambulaveris per ignem &c.* and it shewed metal in them that followed the example: but the next age grew dull, and men being weary of such bane touches, the Clergy that cried it up, their successors cried it down, and so devoured their own birth, without any difficulty, other than a bare injunction of a King that had power to command only such as would obey. *Ordeale.* An. 813. An. 895. Ll. Æthelst. Can. 23. An. 928. Isa. 43. 2. Spicil. Selden.

But where fame was yet more slight, and springing rather from want of charity and misapprehension than promising circumstances; men were wont to be contented with a *voier Dire*, or the oath of the party suspected, and the concurrent testimony of other men: the first attesting his own innocency, the other contesting their consciences of the truth of the former testimony; and therefore were, and still are called Compurgators: their number was more or less, and of greater or *Compurgators.*

leſs value, according as the offence or the party ſuſpected was
Ll. Edm. c. 16. of greater or leſs concernment. This manner of trial was of ancient uſe, and both it and that Ordeale under the directory of the Clergy; yet this was the ancienter by three hundred
An. 647. years, and firſt brought into this Nation by the Council at *Berghamſted* under *Bertwald* Archbiſhop of *Canterbury*. And
Ll. Canut. cap. 5. it was performed ſometimes more ſolemnly by ſolemn receiving of the Euchariſt, eſpecially if the perſon ſuſpected was of the ſacred Function.

Battel. One manner of trial yet remains which was uſed both in trial of matters of crime and title; and it is the trial by battail which was in criminal matters with ſharp weapons, but in titulary matters with blunt weapons. No defendant could refuſe battail offered, but ſuch as were too excellent, as the King; or too ſacred, as the Clergy; or too weak, as women, maimed perſons, and children; or too inſcient, as Ideots and Lunaticks; or too mean; as villains. And as theſe were not neceſſitated to anſwer in battail, ſo was no free man compelled to anſwer them by battail. This way was an old way, as may
Miror. cap. 2. Sec. 13. appear by the concluſion of appeals, and ſeemeth more ſatisfactory than that of Ordeale; becauſe this reſted upon the conſciences both of Appellant and Defendant, whereas Ordeale reſted only upon the ſingle conſcience of the Defendant, which oftentimes was rather hardy than innocent. And the continuance of this trial in title even at this day ſhews that men can away with this, and that there is not evil ſufficient in it to eradicate this weed; although it be kept under ground and experience ſhews, that right and victory alwaies do not concur.

CHAP.

CHAP XXXVIII.

Of the ordinary manner of trial amongst the Saxons *by Inquest.*

THe last and most ordinary way of trial was by witnesses (upon travers of the matter in fact) before the Jurors, and their votes thereupon: this made the Verdict, and it determined the matter in fact. In former time questionless it was a confused manner of trial, by votes of the whole multitude, which made the verdict hard to be discerned: but time taught them better advice, to bring the voters to a certain number, according to the Grecian way, who determined controversies by the suffrages of four and thirty, or the Major part of them. But how the number came to be reduced to twelve I cannot conjecture, unless in imitation of that rule of compurgators, that ordinarily exceeded not that number. The first Law that defined this number was that of *Æthelbred* about three hundred years before the Conquest. *In singulis Centuriis, &c.* In English thus; In every Century or Hundred let there be a Court, and let twelve ancient free men, together with the Lord of the Hundred be sworn that they will not condemn the innocent, nor acquit the guilty: and this was so strictly eyed, that *Alfred* put one of his Judges to death for passing sentence upon a verdict corruptly obtained, upon the votes of the Jurors, whereof three of the twelve were in the negative. And the same King put another of his Judges to death, for passing sentence of death upon an *ignoramus*, returned by the Jury: and a third, for condemning a man upon an Inquest taken *ex officio*, when as the Delinquent had not put himself upon their trial.

Inquest.

Emmius.

An. 675. Ll. Sax. Lamb.

Mirr. cap. 5. Sec. 1.

But the *Saxons* were more careful of the credit and life of man, for no mans life or credit rested altogether upon the cast of twelve opinions: but first twelve men enquired of the fame and ground thereof, which if liked rendred the party under the

Two Juries.

ſpot of dilinquency, and meet to be looked upon as under the ſuſpicion of the Law, who formerly was but under the ſuſpect of ſome particular man. And then was a ſecond enquiry of the fact, if the party traverſed the vote of Fame. In both which trials the verdict grounded it ſelf upon thoſe *allegata* and *probata* which were before them. The firſt of theſe inquiries was before the Coroner, who even in theſe old days had the view of bloodſhed. The ſecond was had before the Judge of life and death: neither of which could legally indamage the party without the other, unleſs the Judg meaned to anſwer it with the peril of his own perſon and eſtate, as it befell in *Alfreds* time, when as a Judg ſuffered death for paſſing ſentence upon the Coroners only record, unto which a replication is allowed, as the book ſaith; and another Judge had the ſame meaſure for condemning one without appeal or indictment foregoing. Where by the way I might note another difference between Appeals and Indictments, in this, that Appeals were and are the more ſpeedie trials than Indictments, in as much as the former were but one act, the latter two.

Miror cap. 5. Sec. 1.

Miror. cap. 2. Sec. 11.

Medietas Linguæ.

And yet time and experience refined this way of trial into a more excellent condition: For the bloody times of the *Saxons* firſt age paſſing over, and peace ariſing by degrees, they together with the *Britons* began to *intercomon*, and about the Marches become a mixt people under a mixture of governmnet and Laws (as hath been already noted) amongſt which one concerned their way of trial of matters in fact by a Jury mixt both of *Britons* and *Saxons*, which was ſetled by a Law made by *Ætheldred. Viri ſint, &c.* In Engliſh thus: Let there be twelve men of underſtanding in the Law, ſix of them *Engliſh*, and ſix *Welſh*; and let them deal Juſtice both to *Engliſh* and *Welſh*. The equity of this Law in future ages ſpread it ſelf into all trials of Foraigners in every place throughout this Iſland. Unto ſuch as ſtumble at this conceipt, becauſe they are ſaid to be *ætate ſuperiores*, and *jure conſulti*, I ſhall only note thus much. That it is not to be doubted but the work of Jurors required chief men both for experience and knowledg in the cuſtoms of thoſe times, to enable them to judg of the matter in fact; and upon whoſe judgment the life and death

p. 72.

L' Ætheldred. cap. 3. Lamb.

death of the party rested principally: and as probable it is that those Jurors, as they were then chief men, so they sate in the most eminent place of the assembly or court, and were co-assessors with the Bishop and Sheriff, who did serve but only to advise the rest, and they or one of them to publish the sentence which the Law predetermined: And this chief place the Jurors might have possessed at this day, as they do in *Sweden*, had the chief men holden the service still worthy of their attendance.

But great men grew too great in their own esteem for the service of their Counrey, betaking themselves to serve themselves; and matters of highest imployment were left to those of the meaner condition, who being in their own persons of less admiration, were thought unmeet to sit in such eminent places, and so from the bench descended to the floor, as at this day. This delidiousness of the greater sort made one step further to the full perfection of that manner of trial both of the persons and estates of the *English*, which hath been the envy of other Nations, and is called the trial *per pares* or by Peers. For the pride of the *Danes* (now growing into one people with the *Saxons*) not indureing such fellowship with the mean *Saxon* freemen in this publique service; and the wise *Saxon* King espying the danger in betrusting the lives and estates of the poorest sort unto the dictate of these superbient humours; and on the contrary in prostituting the Nobler blood upon the vote of the inferiour rank of men, provided a third way, and by agreement between him and *Gunthurne* the *Dane*, setled the Law of Peers. *Si minister regis, &c.* If a Lord or a Baron be accused of homicide, he shall be acquitted by twelve Lords: but if of inferiour rank, he shall be acquitted by eleven of his equals and one Lord. Thus Gods providence disposed of the pride of men, to be an instrument of its own restraint; for the great men ere they were aware hereby lost one of the faireſt flowers of their Garland, *viz.* the judicature, or rather the mastership of the life or death of the meaner sort; and thereby a fair opportunity of containing them for ever under their aw. And no less remarkabe was the benefit that redounded to this Nation hereby, for had

Peers.

Ll. Alured.

Concil. Brit. fo. 492.

had the great men holden this power, as once they had it, it might soon have endangered the liberty of the free men, and thereby been destructive to the Fundamental constitution of the goverment of this Realm, which consisteth in the just and equal participation of these priviledges, wherein all are equally concerned. This was the trial wherein the people of this Nation were made happy above all other people, and whereby the free men, as they had the legislative power, so likewise had the juridical; and thereby next under God an absolute dominion over themselves and their estates: for though this course of trial was first applied to matters of crime, yet it soon also seized upon the Common pleas, which for the most part was the work of main import in the Hundred Court; and suitable hereunto are the prescriptionswhich are extant in the Law-books of cognisance of pleas, and writs of Assize, &c. from the times of the *Saxons*, as in that case of the Abbot of *Bury* amongst others doth appear.

26. ass. pl. 24.

CHAP. XXXIX.

Of passing of judgment and execution.

After verdict judgment passed according to the letter of the Law, or known custom; in criminal matters according to the greatness of the offence, either for death or loss of member. But if the circumstances favoured the Delinquent he was admitted to redemption of life or member, by fine also setled by letter of the Law, and not left to the Judges discretion. If the crime reached only to shameful penance, such as Pillory or whipping (the last whereof was inflicted only upon bondmen) then might that penance be reduced to a ransom, according to the grain of the offence assessed in the presence of the Judge by the free men, and entered upon the roll, and the estreat of each ransom severally and apart sent to the Sheriff. This ransom was paid usually unto the King and Lord, and the party indamaged, or his friends, if the case so required; according to the old *German* rule, *Pars*

LI. Inæ
LI. Canut.

LI. Inæ. cap. 22.

mulctæ

mulctæ Regi vel civitati pars ipsi qui vindicatur vel propinquis ejus. This course opened indeed away for mercy, but through corruption a floodgate to wickedness in the conclusion. Tacitus. Of imprisonment there was little use in the eldest times; afterwards it was more used not only to secure the person to come to trial of Law for miscarriages past, but sometimes to secure men against committing of future mischief, especially if it more concerned the publique. I find but little or no use thereof barely as a punishment, nor would their ancestors so punish their bondmen: *Vinculis coercere rarum est.* In case of debt or damage the recovery thereof was in nature of *elegit*; for the party wronged either had the offenders goods to him delivered or the value in money upon sale of the goods made by the Sheriff; and if that satisfied not, then the moity of the Lands LI. Edw. was extended, and so by moities so far as was possible, *salvo contenemento*, and when all was gone the defendants arms (which were accounted as the Nether-millstone or stock of maintenance) were last of all seized, and then the party was LI. Alured. c. 1. accounted undone, and cast upon the charity of his friends for his sustenance: but the person of the man was never imprisoned as a pledg for the debt no not in the Kings case; *Alfred* imprisoned one of his Judges for imprisoning a man in that case. One punishment of death they had in cases of crime, and that was by hanging or strangling; and where the crime was not so great, sometimes ensued loss of member or mutilation; and in many such cases Excommunication pronounced indeed by the Clergy, but determined by the Law, which in the first conception was framed in the womb of the legislative Concil. Brit. power in Parliament, as may appear in many Laws there made; 105, 251, 355, nor was there in those times any question made of the cogni- 420. sance thereof, so long as the Clergy and Laity had charity enough to joyn in all publique Councils.

M'ror. cap. 5. Sec. 1.

CHAP.

CHAP. XL.

Of the penal Laws amongſt the Saxons.

PAſſing the Courts and manner of proceedings till ſentence we are now come to the particular Laws that directed the ſentence, and firſt of thoſe that concerned criminal offences. During the *Saxons* time the Common-wealth was in its minority, the government tender, the Laws green and ſubject to bend according to the blaſt of time and occaſion; and according to the different diſpoſitions of governours, ages, and peoples. For though the *Saxons* were in name our firſt matter, yet not they only; but they having once made the breach open, and entered this Iſland it became a common ſewer to the excreſcency of thoſe Eaſtern people of the *Angles*, *Danes*, *Almains*, and *Goths*; as their ſeveral Laws left with us in power do not obſcurely inform us; and amongſt all the reſt the *Goths* were not the leaſt concerned herein; for the *Saxon* King determining what people ſhall be holden Deniſins in this Kingdom, ſaith that the *Goths* ought to be received and protected in this Kingdom, as ſworn brethren, kinſmen and proper Citizens of this Common-wealth. Nor can any Nation upon earth ſhew ſo much of the ancient *Gothique* Law as this Iſland hath. Nevertheleſs in this mixture of people of ſeveral Nations, there being a ſuitable mixture of Laws, as the power of any one of theſe peoples changed, ſo likewiſe did their Laws change in power; and long it was ere a right temper of one uniform Law could be ſetled, yet in the interim theſe ſhort remembrances left unconſumed by time, I have ſubjoyned, that it may appear their notions were excellent, though ſomewhat inconſtant in their practice.

Thoſe times were dark, and yet ſo far as any light appeared the people were to be honoured for their reſolution in the defence thereof. For there was few of the Commandments of the two Tables which they did not aſſert by Laws by them made,

made, the third and tenth excepted; which latter commands the inward man only, and whereof God hath the sole cognisance.

True it is that the first Commandment containeth much of the same nature; yet somewhat is visible, and that they bound; for whereas in those times the Devil had such power as he did prevail with some, and those it may be not a few, to renounce God, and deliver themselves wholly to his own will; they punished this crime with Banishment as unworthy their society that would communicate with Devils, yet if the delinquent had done any mischief whereby death ensued, the parties punishment was death; yet might all be discharged by ransom, and good security for good behaviour for time to come. *The first Commandment. Witchery.* Ll. *Sax.* cap. 6.

For their worship of God they were no less zealous in maintenance of the manner; as their forefathers liked not the use of Images or pictures for adoration, neither did they: and though the Clergy in other matters led them much, yet in this they were alone for a long time; for though the Roman Church had the use of Images above three hundred years before *Austins* coming, yet could not that custom fasten upon the *Saxons* for the space of above one hundred years after *Austins* coming, notwithstanding the endeavours of *Charlemain* and Pope *Constantine* by his bastard decree begotten upon the dream of the Bishop of *Worcester* that saw the Virgin *Maries* picture brought him in his sleep by her self, and with a command from her that it should be set up in the Church and worshipped: I say it could not fasten any constant practice of Idol worship, nor ever wrest a Law from the *Wittagenmot* to countenance the same; but rather on the contrary they still preserved the memorial of the second Commandment in the Decalogue even then when as the Romanists had expunged the same out of the number; and they inforced the same by a Law of their own making, so far as their Clergy, or reverence they bare to *Rome* would allow. *The second Commandment.* Concil. Brit. 218. Concil. Brit. 364. Ll. Canut. c. 5.

It hath been formerly observed that the *Saxons* took no note of the vice of prophane swearing and cursing; which crime (if it were in use, as it cannot be otherwise conceited but it *The third Commandment.*

was) as the times then were, must lie upon the Clergymens account for their neglect of teaching the point, or upon the general ignorance of those times, which understood not the Commandment, nor the Scripture. For we find no Canon against it, nor scarce any doctrine concerning it, but only in case of false swearing, till *Anselms* time. True it is that *Chrysostom* seemeth zealous against all swearing; but that was his personal goodness, which for ought appeareth died with him. And *Anselme* contending against swearing by the creatures, and idle swearing, renders his grounds in such manner as it may be well conceived that he understood not the main.

Cent. 1. cap. 4. de leg.

The fourth Commandment.

I am the rather induced to conceive Charitably of those times in regard of their exceeding zeal for the honour of the Lords day; which sheweth, that so far as their knowledg would maintain them they had zeal to make it into action. They began this day doubtless as other days, according to the custome of their forefathers in *Germany*, *Nox ducere diem videtur*. And because they would not allow their secular affairs to trench too nigh that days devotion, they made the Lords day to begin on Saturday at three of the clock in the afternoon, and to continue till munday morning. No pastime, no not their beloved sport of hunting, was allowed during all that while: nor no works were to be done, but such as concerned the worship of God; and those Laws they bound with penalty of fine, if the delinquent were a free man; if he were a bond servant, he was to be whipped: Nor were these the Laws of one King, or age only, but of the whole currant of the Saxon government, and may, although dark times they were, yet put us in these days of light to the blush, to enter into compare with them for their devotion.

Tacitus.

Concil. Brit. 415. 446.

Vid 268., 317., 404., 518., 546.

The fifth Commandment. Treason.

In their conversation with men the *Saxons* seemed yet more strict, and being a people of a publique spirit, they preferred the good of their Countrey above all; accounting trechery against it, or neglect thereof in time of danger to be a crime of the greatest concernment, and to be punished in the highest degree *Proditores & transfugas arboribus suspendunt*. Other Treason than this, no not against Kings, did they then acknowledg any

Tacitus.

any; and therefore the form of the Indictment for contriving the death of their King concluded only *Felonice*, as may appear in that form of an indictment for an offence of that nature intended and plotted against *Edmond* the Saxon King: when as for the plotting against alliance, though of common and inferiour nature, the indictment concluded *felonice & proditorie*. And whereas the penalty in case of trechery against the Countrey was death, and forfeiture of the whole estate, both real and personal: In trechery against the King it was only loss of life, and of the personal estate. And therefore it may seem that Majesty had not yet arrived at its full growth; or else that the greatest measure thereof rested in the body still.

Miror cap. 2. Sec. 11.

Miror cap. 2. Sec. 13.

Ll. Edw. c. 38.

Concil. Æneham. 26.

If in any thing the Saxons were indulgent, it was in matters of Blood; for they were a warlike people, and looked upon it as under the regiment of valour; and therefore it was punished only with fine, according to the old rule, *Luitur homicidium certo armentorum & pecorum numero*. So as even in *Germany* they had learned the trick to set a price upon that crime; and this they afterward called *Manbotta vera virgida vita* and lashlight: and which was worse, they countenanced that which in after ages was called deadly feud; and so under colour of punishing murder with revenge, they added blood to blood. But as times grew more tame, and inclining to civility or Religion, the cry of Blood was more hideous; and this urged on the Law of appeals, and so private revenge became under the power of the Law: which punished death with death, savouring of such a King as *Alfred* was, who first taught the Scriptures to speak in the dialect of our own Laws; like the Rubrick amongst the Canons, bringing therewith both strength and beauty; yet they had degrees of blood-shed, and made a difference in the punishment; for some sprung from sudden passion, but other was forethought and purposed; which last they called *Abere* murther, or murther by foreplot or treachery; and this was made *nullo precio emendabile*; and yet towards the times of the *Danes* devotion grew of so high a dye that a Sanctuary could represent any bloodshed more allowable, if not acceptable; under the golden colour of recompence made to the King, the Lord of the party slain, and

The sixth Commandment.

Man-slaughter.

Sax. Lamb. fol. 17. 18.

Miror. cap. 5. Sec. 1.

Ll. Alured *Sax.* præface Lamb.

Gloss. p. 4.

Ll. Canut. cap. 93.

Tacitus.

the parties friends; for the loſs of a ſubject, a tenant, and a friend, according to that of their forefathers; *recepitque ſatisfactionem univerſa Domus.* It would be too tedious to recite all the particular Laws, with their changes, and therefore they ſhall be left to the view in the ſeveral Laws of *Alfred*, *Edmond*, *Canutus* and *Edward* the *Saxon* Kings, Yet one cuſtom firſt begun by the Danes, I cannot omit: That if a man were found ſlain, whoſe parents or friends were unknown, by common intendment he was to be preſumed to be a Dane, and then if the delinquent were not taken, nor fled to Sanctuary, nor known where he is, the whole Hundred was amerced for the eſcape; but if the partie ſlain were known to be of Engliſh parents, it was otherwiſe. This cuſtom laſted long after the *Normans* time, the *Dane* being only changed into the *Norman*, and was called Engliſhire. Batteries, maimes, impriſonments, and other breaches of peace were puniſhed by fine, which they called *Fightwitt*, *Grithbrece* or *Frithbreck*; and the delinquent ordinarily put in ſureties for the peace for future time; the fine was increaſed by the number of delinquents joyning in the fact; for if ſeven joyned, it was a riot, and the fine was then called *Flothbote*. If the number were five times ſo many *viz.* thirty and five, then it was a rebellion or war. Secondly, the fine was increaſed by the time or ſeaſon of the fact, as in Lent, or while the Army was in the field; becauſe, in the firſt caſe, the holy time was prophaned; in the ſecond the countrey was more endangered when the ſtrength was abroad, and the Army might be diſcouraged at the news of the diſturbance at home, And therefore the *Saxons* puniſhed this with death, or fine ſuitable. Thirdly, the fine was the greater in caſe of the excellency of the place, where it was holy ground, or in the preſence of great perſons, ſuch as the King or Biſhop.

Engliſhire. Stamf. lib. 1. cap. 10. Miror. cap. 1. Sec. 13.

Bracton. lib. 3 tract. 1. cap. 15.

Breach of peace. *Batteries.* *Maimes.* *Impriſonments.* Alured. præf. Lam. 13.

Ll. Edw. c. 31. Ll. Sax. cap. 36. Ll. Inæ. cap. 6.

Adultery among the old *Germans* was holden a crime of a high nature; the penalty of the woman that committed that crime was death. I find not what became of the man; in latter times of the *Saxons* it grew leſs penal, and more common. By *Alfreds* Law it was finable, and the fine called *Legierwit*. By *Canutus* the man was fined or baniſhed, the woman to loſe her noſe, ears, and her portion. Inceſt was more penal to the man

The ſeventh Commandment. Baron. Annal. 745. num. 5. Concil. Brit. 158. Ll. Canut. 50. reg. 22.

man than Adultery, and yet it touched not his life.

Incest.

Robbery amongſt the Lacedemonians was accounted but a trick of youth, the Athenians thoughts were more ſevere. The *Germans* likewiſe differed in their cenſures concerning it; the *Saxons* puniſhed it with death, but the Angles with fine only; yet *Ina* the King made it mortal, and *Canutus* followed him therein: and *Edward* the Confeſſor limited that puniſhment to theſts of twelve pence in value, or above, burning of woods was finable by *Inaes* Law: but Burglary was felony. In King *Edmunds* time only the *Danes* made it finable; poſſibly being guilty in their own conſciences of their own propenſity to rapine and plunderings. This privilege of the dwelling houſe was anciently called *Hamſoca*, or *Hamſoken*, or *Hamſokne*. Treſpaſſes committed upon ground were all comprehended under the general name of *Ederbrece*, or hedg-breaking; and the penalty was not only the damage to the party, but alſo fine to the King upon action, which in theſe days paſſeth under the name of *Quare clauſum fregit*, according to the words of the Writ. The dammages were more or leſs according to the time or ſeaſon when it was done; for if when the Army was abroad, the dammages were doubled; and in like manner, if done in Lent time. If the treſpaſs was done by a Beaſt, the owner muſt pay the damages: But if it were occaſioned through the complainants default (as through his gap) no damages were paid. The conſtant fine to the King in all ſuch treſpaſſes was by *Alfreds* Law ſet at five ſhillings. Other actions alſo were then uſed as touching damage done to goods and actions upon the caſe; for in *Alfreds* time the Plaintiff recovered not only dammages for treſpaſſes done to poſſeſſions and goods, but alſo coſts for injuries in point of ſcandal and defamation, in caſe the complainant ſpecially declareth that he is thereby diſabled or indamaged in his preferment and maketh proof of the ſame ſuitable unto the forms of our pleadings at this day, which conclude with *per quod &c.* or *& deterioratus eſt &c.*

Ll. Sax. 48. reg. 19.

The eighth Commandment.

Lind. Ll. Aug. & Sax.

Ll. Sax. 4. reg. 3.

Miror. 26.

Burning of woods.

Burglary.

Ll. Edm. cap. 6.

Ll. Canut. p. 59.

Treſpaſſes.

Ll. Sax. cap. 36.

Ll. Inæ 5. 6.

Ibid. c. 40.

Ll. Sax. c. 36.

Miror. p. 301.

The *Saxons* were utter enemies to perjury: they puniſhed it with eternal diſcredit of teſtimony; and ſometimes with baniſhment, or with grievous fines to the King, and mulcts

The ninth Commandment.

Ll. Æthelſt. c. 10.

Ll. Canut. c. 5.

to

Spec. Sax. l. 3, art. 53. to the Judg. For that difference I find observed in those daies between fines and mulcts, albeit the more ancient times used them for one and the same; for so the Historian *pars multæ Regi*. In all these matters where any interest was vested in the Crown the King had the prerogative of pardon; yet alwaies the recompence to the party was saved; besides the security of the good behaviour for time to come, as the case required.

Ll. Edw. c. 18.

CHAP. XLI.

Of the Laws of property, of Lands and goods, and their manner of conveyance.

THus passing over some tops of *Saxon* penal Laws, besides the general rule or Law of eye for eye, tooth for tooth, &c. it now remains as lightly to glance at a few generals concerning the setling and property of possessions in point of title; concerning which, although it be true that the Conquerors of this part of the Isle were a body aggregate of many Nations or peoples; and so divers customs must necessarily settle by common intendment in several places, according as they chose their habitation: yet the general custom of the *Germans*, as touching descent of inheritance was to the eldest son; For *Tacitus* speaking of the *German* Cavalry, saith, that the horse of the party dead went not to the eldest son *ut cætera*, but to the most valiant man amongst them of that linage; which words *ut cætera* do plainly intimate, that other matters of profit passed to the eldest son in point of descent; Nor can I conceive how men should be induced to conceit that the custom of Gavelkind was the ancient general custom of the *Germans*. Its true the words of the same Historian have misled some; the words are, *Hæredes tamen & successores cuique Liberi*; these taken collectively I grant may import somewhat tending that way; but they may as properly be taken disjunctively, that the Children inherit by course; and if none such were, then the Brothers; if they failed, then uncles. And its

Miror. cap. 5. Sect. 1.

Inheritance.

its not only evident that in the publique succession to the Crown they had an eye this way; but in the descent of private and particular estates, as by many instances out of those old Histories may appear; and had any other custom been general, *Alfreds* rule by *Moses* Law had never succeeded; nor could that other custom hold out against the constant desire of the *Saxons* to perpetuate their families in greatness and honour: all which besides the express Laws set forth in the Codes, are in my conceit sufficient to induce an historical faith that the general course of descent was to the eldest sons, and not to all joyntly. Nevertheless out of this estate of inheritance divers particular estates were created, as well by common custom, as by the especial act of the owner of such an estate. Such of them as were wrought by custom was occasioned from marriage, whereby if the man was setled of such estate as formerly hath been recited, and died; his wife surviving, by ancient custom she had her dower or third part of such estate of inheritance. This custom though ancient, yet was not originally from the *Germans*, but from the *Latines* who used to give dower with the man, and receive portion with the woman. But the *Germans* learned from the *Greeks* otherwise; for the Laws both of *Solon* and *Lycurgus* forbad the latter, lest marriages should be made for reward, and not grounded upon affection; which, as they conceived, would be a means to maintain the strength of mankind in generation. And therefore *Tacitus* noteth this by way of Antithesis *Dotem non uxor marito sed uxori maritus offert.* The dower that was given in the first times was goods; and these were utensils for war. And the wife many times returned to the man tokens of her love in the same kind, and not as gages of future maintenance, unless we shall account war their proper calling from whence their livelihood issued. Succeeding times growing more calm changed the custom of fighting into trading, and taught them to prefer the stock gotten by commerce, before that of war, and so the dower was changed. This course continued all the *Saxons* time, for ought I can find; for not much above threescore years before the Conquest it was by a publique Law confirmed, that the Bridegroom before

Dower.

Plut vit. Solon. Apoth. g. Lacon.

LI. Sax. Lamb. Edm. fo. 76.

Ll. Sax. 50. Reg. 22. fore marriage ſhould ſet forth that portion of goods that ſhould be his wifes, and theſe were ever afterward holden her own proper goods. But if no ſuch proviſion was made before marriage, then the Law or cuſtom gave the wife half her husbands goods, if ſhe outlived him, and if there were children, then the whole eſtate in goods, to provide for her ſelf and them, untill ſhe took a ſecond husband; but if the husband ſuffered death as a Malefactor, the wife was to have but one third part. I find no footſteps of Dower in Lands untill the *Normans* time; who were alſo as well owners of the wifes perſonal eſtate, as of their perſons; and before which time the *Saxon* wives in divers regards were more abſolute and independent: I ſay not more happy, becauſe they were never one with their husbands; nor were they ever under the Law of free pledge, as wives; nor was the husband his wifes pledge as he was her husband; although as a maſter he was free pledge for his ſervants: for the Law was, that in caſe the husband carried his wife away into another Lordſhip, as he muſt give pledges that his wife ſhall have no wrong, ſo ſhe muſt give pledge by her friends that ſhe ſhall do no wrong; and ſhe paſſed therefore as an appurtenant to her husband, then in unity with him; and her eſtate or portion was rather appurtenant to her then him; for if ſhe failed in her good carriage to her husband, ſhe was to make amends out of her own eſtate to her husband; and if her eſtate ſufficed not, then her pledges were to ſatisfie the husband. Nevertheleſs what failed in the relation of the woman to the man, was ſupplied in the relation of the man to the woman; for beſides the reſpect the men bare to the women, as their wives, they honoured them as *German* women, that admired valour in all, Idolized it in their husbands, and ſhared in it themſelves; and upon occaſion merited thereby not only to be companions in honour, but triumphers above men, yea their Commanders and governours: Nor was this the original trick of the rude and uncompt *Germans* or Barbarous *Britans*, but of the wiſe *Greeks*; and received as may be ſuppoſed from the *Lacedemonians*, upon as good ground as the wife of *Leonidas* the *Lacedemonian* King rendred, who being asked why the *Lacedemonian* women ruled their huſ-

Ll. Sax. Lamb. fo. 14. Ll. Inæ. cap. 51.

Ll. Edm. Lamb cap. 7.

Ll. Sax. 50. Reg. 22.

bands,

bands: Its true, said she, for we only know how to obey our husbands. A second particular estate, which the Law derived out of the inheritance, was advancement to the husband; for the *Saxons* were not so stupid as to refuse favour proffered: and therefore they made a Law of Counter-teneur to that of Dower which we commonly call tenure by the curtesie of *England*; which was but a perquisite of the wives estate given to the husband, in case he overlived his wife, and had issue by her born alive: The name was probably given by the *Normans*, who as it seemeth had no such custom; and therefore they gave it the name from the *English* (albeit since that time *Scotland* hath also allowed it amongst them) who might probably bring it into this Kingdom or Countrey amongst the mingled people; for this custom or Law is found amongst the ancient *Almain* Laws: differing only from the Law this day in the evidence of the title; which now ariseth upon the birth of the Child heard to cry; when as in those daies the title vested not unless the Child opened his eyes *ut possit videre culmen domus, & quatuor parietes*, which toucheth not only the opening of the eye, but also the rowling of it about. *Curtesie of England.* Ll.Alm. tit.92. Lindenbr. cod.

Estates that were derived out of the estate of an inheritance by the act of the party, either were such as concerned the whole inheritance, or part thereof. That which concerned the whole inheritance, was nothing but a parcelling of it out according to the will of the giver; and this was afterwards called estate Taile, which passed also amongst some places by way of custom, as amongst the *Angles* it was a Law that the inheritance should pass unto the issue males on the fathers side, untill the fifth generation, before any title could accrue to the issue female; and then according to their Proverb, it went from the Lance to the Spindle. But the *Danes* possibly might prevent this in the continuance thereof; for they brought along with them that which was formerly the *Saxon* custom, which carried the inheritance unto the daughters, upon the failing of the issue male as in the example of *Cenedritha* daughter to *Cenulphus*, amongst multitudes of others may appear. But where Lands were conveyed by writing or act of the party, it was a Maxim that the will of the conveyor should *Estate taile.* Ll. Ang. tit. 6. Lindenbr. Ll. Sax. tit. 7. ibid. Concil. Brit. 333. Ll. Alured. Sax. c. 7.

be ſtrictly obſerved: nor could ever any one that came in by vertue of ſuch writing ever alien the Land to croſs the current of the original conveyance. The entailing of eſtates therefore was very ancient, although by corrupt cuſtom it was deluded, as the Lord *Dier* in his argument of the L. *Berklies* caſe obſerveth.

Plo. com. 251. b.

Another cuſtom of inheritance was catcht I know not how, its called Burrough Engliſh, and by the name may ſeem to be brought in by ſome Cynical odd *Angle* that meant to croſs the world, and yet in a way not contrary to all reaſon: for where nature affords leaſt help, the wiſdom of men hath uſed to be moſt careful of ſupply, and thus the youngeſt became preferred before the elder in the courſe of deſcent of inheritance according to this cuſtom. There is no further monument of the Antiquity hereof that I have met with, than the name it ſelf, which importeth that it ſprang up whiles as yet the names of *Angles* and *Saxons* held in common cogniſance: and might ariſe firſt from the grant of the Lords to their Tenants, and ſo by continuance become uſual; and by this means alſo might ariſe the cuſtom of Copy-holds of this nature ſo frequent, eſpeciallly in thoſe Eaſtern parts of this Iſland where the *Angles* ſetled, and from whom that part had the name of the Eaſt *Angles*.

Another cuſtom of deſcent remaineth, and that is to the children collectively, and its called Gavel kind, or Gave-all kind: and by the very name ſeemeth at the firſt to ariſe rather from the donation of the parent or other anceſtor, contrary to common cuſtom, than by common Law: otherwiſe no need had been of an eſpecial name. In the original it ſeems it equally concerned all both ſons and daughters, as partners; and for want of ſuch, the brothers and ſiſters. It ſeemeth to be firſt the Law of the *Goths* or *Jutes*; for it remaineth in uſe in theſe parts of the Eaſtern Counties. But in latter times this eſtate was alſo tailed, or cut out ſometimes to the ſons and daughters ſeverally; that is, the ſons or brothers to have two parts, and the daughters or ſiſters one part; other times to all the ſons, and for want of ſuch, to all the daughters: and thus theſe courſes of eſtates paſſed over Seas to the

Gavel kind.

Stephan. Dan. Bureus Suci.

Southern

Southern part of this Island where that people most setled in a double stream; the first from the *Athenians* that loved the statelines of their families, the other from the *Lacedemonians* who desired rather the continuance of their families than their greatness. Emmius. Grec.

The manner of conveying of estates between party and party was either by act of the party executed in his life time, or after his death: such as were executed in the life time of the owner, and were such as for the most part were in matters of great moment, were estates passing by deed of conveyance in writing: and for this way the *Saxons* were beholding to the *Latines*, who taught them that course, both for form and Language; and *Alfred* enforced it by a particular Law, *viz.* that all such as hold Lands by Deed in writing should hold them according to the intent thereof, and not alien the same contrary thereunto, the intent thereof being proved by the witnesses. The nature of the conveyances in these ancient times may appear by a deed of one of the Kings of this Island about 400 years before the Conquest, whereby he granted four plough lands in the Isle of *Tenet*, unto an Abbesse; wherein instead of that which we now call the *habendum*, the words are *contulimus possidendum*, &c and after that followeth the uses of the Deed *tuo usui* &c. and then concludes with a warranty, in these words, *tu vero successoresque tui defendant in perpetuum nunquam me hæredesque meos contra hanc chartulam aliquando esse venturos*: the effect of which last clause may appear by the Law of the sale of goods, which in those times was, that if the sale of goods warranted did not hold, the loss should light upon the sellers. The Deeds were usually subscribed with the name of him that made the conveyance, or passed the estate; and if he could not write his name (as it befell often) then the Deed was underligned with his mark: for *Withered* King of *Kent* used the sign of the Cross in subscribing his grants *pro ignorantia literarum*. They used also in those daies to seal their Deeds; for so much the conclusion of King *Inas*'s Charter to the Abby of *Glastenbury* importeth, in words to this effect in English: *I Inas the King do confirm this grant and liberty, by subscription of my own hand, and under the seal of the holy Cross*. True it is *Ingulphus* tells

Conveyances in writing.

Ll. Sax. cap. 37.

Habendum. Use.

Warranty.

Ll. Inæ. c. 74. Ll. Sax. c. 24. Ll. Edw. c. 25.

Signed.

Sealed.

Concil. Brit. p. 198.

us that ſeals to Deeds were of *Norman* original; I believe his intent is concerning ſeals of Wax anexed or affixed unto deeds.

Witneſſes. Laſtly, in thoſe daies alſo they uſed to atteſt their Deeds by ſubſcribing the names of ſuch as were preſent; who being of greater or meaner rank, rendred the credit of the Deed accordingly more or leſs valuable: and upon this ground did the acknowledging or proving of Deeds before the King, Biſhop, County, or Hundred, firſt ariſe.

Acknowledgment.

Livery and Seiſin. Cragius. That was the *Roman* faſhion; but the more ancient *German* way of conveyance was by livery and ſeiſin, as moſt ſuitable to their ignorance, who had learning in as ſlight account as the *Lacedemonians* had, and cared for no more than would ſerve the turn of natural neceſſity. A property they had both in Lands and goods; and where that reſteth, no man can deny them the natural way of giving and receiving by delivery. And therefore though matters of ordinary uſe ſeldom come into the obſervation of ſtory, and this petty ceremony might very well paſs *ſub ſilentio*; yet we are not altogether left deſtitute of the footſteps thereof in antiquity. For *Æthbald* the Mercian King above eight hundred years ago gave the Monaſtery of *Cutham*, with all the Lands thereto appertaining to Chriſt-church in *Canterbury*, and for the confirmation thereof commanded a clod of earth with all the Writings to be laid upon the Altar. Another monument hereof more ancient by the ſpace of above an hundred years we find in that grant of *Withered* King of *Kent*, of four plough lands in the Iſle of *Tenet*, the latter part whereof this clauſe concludes thus: *Ad cujus cumulum affirmationis ceſpitem hujus ſupradictæ terræ ſuper ſanctum altare poſui.*

Concil. Brit. 319.

Concil. Brit. 192.

Laſt will. But every man had liberty to execute the Law of his inheritance in his life time; for ſome were ſurpriſed with ſudden occaſions, and unexpected iſſues and ends; and in ſuch caſes they did what they could to declare their intents by laſt will, which by common intendment being in writing hath occaſioned ſome to think that the *Saxons* in their original had no uſe thereof, being as they conceived ſo illiterate as not having the uſe of writing; but the Character remaining to this day evinceth the contrary; nor can thoſe words of *Tacitus*,

&

& nullum eſt teſtamentum in any rational way be expounded in this ſenſe, if we conſider the context, which runneth thus: *Hæredes & ſucceſſores cuique liberi, & nullum eſt teſtamentum.* Which in my opinion ſounds in this ſenſe: The Heirs and ſucceſſours to every one are his children, and there is no teſtamentary power to diſherit or alter the courſe of deſcent, which by cuſtom or Law is ſetled. Otherwiſe to deny them the uſe of all teſtamentary power, was a matter quite abhorring the cuſtom of all the *Grecians*, from whom they learned all that they had. Nevertheleſs the *Saxons* had not been long acquainted with the *Romaniſts*, but they had gotten that trick of theirs alſo of diſheriting by laſt will, as by the teſtament of *Æthelwolfe* and others of the like nature, in Hiſtories may appear. M. Weſtm. An. 817. Malmsb. geſt. Reg. l. 2. c. 2.

Goods.

The conveyances for merly mentioned concerned Lands and goods; but if no ſuch diſpoſal of goods were, the ancient *German* cuſtom carried them after the death of the Anceſtor promiſcuouſly, or rather in common to all the children; but in ſucceeding times the one half by the Law of *Edmond* paſſed to the relict of the party deceaſed, by force of contract rather than courſe of deſcent. After him *Edward* the Confeſſor recollecting the Laws declared that in caſe any one died inteſtate the children ſhould equally divide the goods, which I take to be underſtood with a *ſalvo* of the wifes Dower or portion. As yet therefore the ordinaries hath nothing to do with the adminiſtration; for goods paſſed by deſcent as well as Lands; and upon this cuſtom the Writ *de rationabili parte bonorum* was grounded at the common Law, as well for the children as the wifes part, according as by the body of the Writ may appear. F. N. Br. 122.

CHAP.

CHAP. XLII.

Of times of Law and vacancy.

Such like, as hath been shewed, was the course of Government in those darker times; nor did the fundamentals alter either by the diversity and mixture of people of several Nations in the first entrance, nor from the *Danes* or *Normans* in their survenue; not only because in their original they all breathed one air of the Laws and Government of *Greece*, but also they were no other than common dictates of nature refined by wise men, which challenge a kind of awe in the sense of the most barbarous. I had almost forgot one circumstance, which tended much to the honour of all the rest, that is their speedy execution of Justice; for they admitted no delays, till upon experience they found that by staying a little longer they had done the sooner: and this brought forth particular times of exemption, as that of infancy and child-bearing, in case of answering to criminal accusations. But more especially in case of regard of holiness of the time: as that of the Lords day, Saints days, Fasts, Ember days; for even those days were had in much honour. Nor only days, but seasons: as from Advent to the Octaves of Epiphany; from Septuagesima till fifteen daies after Easter, or (as by the Laws of the Confessor) till eight days after Easter; and from Ascention to the eighth day after Pentecost; and though as Kings and times did change, so these seasons might be diversly cut out; as the Laws of *Alfred*, *Æthelstan*, *Æthelredred*, *Edgar*, *Canutus*, and *Edward*, do manifest; yet all agreed in the season of the year, and that some were more fit for holy observation than others. And thus by the devotion of Princes, and power of the Clergy, the four Terms of the year were cut out for course of Law in the Kings Court, the rest of the year being left vacant for the exercise and maintenance of Husbandry, and particular callings and imployments, saving that even in those times the Courts of the County and Hundred held their ancient and constant course.

Miror. cap. 4. Sec. 16.

Ll. Sax. cap. 10. Concil. Brit. 5:8.

course, Last of all, and as a binding Law unto all, it was provided that false Judges should give satisfaction to the party wronged by them, and (as the case required) to forfeit the residue to the King; to be disabled for ever for place of judicature, and their lives left to the Kings mercy. Miror. cap. 4. Sec.

CHAP XLIII.

An Epilogue to the Saxon *Government.*

AND thus far of the joints of *Saxon* Government in their persons, precincts, Courts, Causes, and Laws, wherein as the distance will permit, and according to my capacity I have endeavoured to refresh the Image of the *Saxon* Common-weale; the more curious lineaments being now disfigured by time; afar off it seems a Monarchy, but in approach discovers more of a Democracy; and if the temper of a body may appear by the prevailing humour towards age, that Government did still appear more prevalent in all assaults both of time and change. The first great change it felt was from the *Danes* that stormed them, and shewed therein much of the wrath both of God and man. And yet it trenched not upon the fundamental Law of the peoples Liberty. The worst effect it had was upon the Church in the decay of the power of Religion and the Worship of God. For after much toil and loss both of sweat and blood, the *Danes* (finding that little was to be gotten by blows but blows; and that the Clergy at the least was the side-wind in the course of all affairs) laid aside their Paganism, and joyned with the Clergy; and as their Converts and Pupils gained not only their quiet residence, but the favour of the Clergy to make trial of the Throne, and therein served the Clergy so well as they brought the people to a perfect Idolatry, with times, places, and persons, and subjection of their estates to Church tributes. And as at Tenis the *Dane* and Bishop served each other

other with the fond Countrey-man, That whether Lord *Dane* or Lord Bishop was the greater burden, is hard to be determined. Thus became ambitious Prelacy in its full glory, and the poor Church of Christ clouded in darkness, and little hold left for recovery, but only by the liberty of the *Saxon* freeman; which the *Danes* could never conquer, not for want of will or power, but of time and occasion; for the Crown returned to the *Saxon* line again after the half age of one man, although it was worn by three; so God would have it; nor did any monument of the *Danish* government remain, saving a few customs in some places which shew rather that the *Danes* were there than ruled here.

To summe up all. The *Saxon* Commonweal was a building of greatest strength downward even to the foundation, arched together both for peace and war. That by the Law of Decenners, wherein Justice was the bond, this by their Armies gathered, not by promiscuous flocking of people, but by orderly concurrence of families, kindreds, and Decenners, all choosing their own leaders; and so honour, love, and trust conspired together, to leave no mans life in danger, nor death unrevenged. Tacitus.

It was a beautiful composure, mutually dependant in every part from the Crown to the clown, the Magistrates being all choice men, and the King the choicest of chosen; election being the birth of esteem, and that of merit, this bred love and mutual trust, which made them as corner-stones, pointed forward to break the wave of danger; nor was other reward expected by the great men, but honour and admiration, which commonly brought a return of acts of renown.

Lastly, it was a regular frame in every part squared and made even by Laws, which in the people ruled as *lex loquens*, and in the Magistrate as *lex intelligens*; all of them being grounded on the wisdom of the *Greeks* and Judicials of *Moses*. Thus the *Saxons* became somewhat like the *Jews*, divers from all other people; their Laws honourable for the King, easie for the subject; and their government above all other likest unto that of Christs Kingdom, whose yoke is easie, and burthen light; but their motion proved so irregular

irregular as God was pleaſed to reduce them by another way.

CHAP. XLIV.

Of the Norman entrance.

THus was *England* become a goodly Farm: the Britans were the owners, the Saxons the occupants, having no better Title than a poſſeſſion upon a forcible entry, with a *continuando* for the ſpace of four hundred years, ſeldom quiet, either from the claim and diſturbances of the reſtleſs Britans, or invading Danes, who not only got footing in the Countrey, but ſettled in the Throne, and after gave over the ſame to the uſe (as it proved) of another people ſprung from the wild ſtock of *Norway*, and thence tranſplanted into a milder Climate, yet ſcarcely civilized; that in one Iſle the glory of God's bounty might ſhine forth to all the barbariſm of *Europe* in making a beautiful Church out of the refuſe of Nations. Theſe were the Normans out of the continent of *France*, that in their firſt view appeared like the pillar of the cloud with terrour of revenge upon the Daniſh pride, the Saxon cruelty, and Idolatry of both people; but after ſome diſtance ſhewed like the pillar of fire, clearing God's providence for the good of this Iſland, to be enjoyed by the ſucceeding generations. Nor was this done by revelation or viſion, but by over-ruling the aſpiring mind of Duke *William* of *Normandy* to be a ſcourge unto *Harold* for his uſurpation, and unto the people for their cauſleſs deſerting the royal ſtem: yet becauſe the haughtieſt ſpirit is ſtill under ſame and opinion, and cannot reſt without pretence or colour of right and Juſtice, the Duke firſt armed himſelf with Titles, which were too many to make one good claim; and ſerved rather to buſie mens minds with muſing, whiles he catcheth the prey, than ſettle their judgements in approving of his way. Firſt, he was couſin german to the Confeſſor, and he childleſs: and thus the Duke was nigh, though there were nigher than he; but the worſt point

in the case was that the Duke was a Bastard, and so by the Saxon Law without the line; nor was there other salve thereto but the Norman custom, that made no difference; so as the Duke had a colour to frame a Title, though *England* had no Law to allow it; and this was the best flower of his Garland, when he meant to solace himself with the English, as may appear by what his Son *Henry* the first sets forth to the World in his Charter, whereby he advanced the Abby of Ely into the degree of a Bishoprick, and wherein amongst his other Titles, he calls himself Son of *William* the great, *Qui Edwardo Regi Successit in regnum jure hæreditario.*

Spicileg.

But if that came short, he had the bequest of the Confessor, who had designed the Duke to be his successor: and this was confirmed by the consent of the Nobility, and principally of *Harold* himself, and in assurance thereof promised his Sister to the Duke in marriage. This countenanced a double Title, one by Legacy, the other by Election, and might be sufficient if not to make the Duke's Title just, yet *Harold's* the more unjust, and to ground that quarrel that in the conclusion laid the Duke's way open to the Crown: And for the better varnish the Duke would not be his own Judge, he referrs his Title to be discussed at the Court of *Rome*, and so flattered the Pope with a judicatory power amongst Princes (a trick of the new stamp) whereby he obtained sentence in his own behalf from the infallible Chair: The Pope glad hereof laid up this amongst his treasures as an estoppel to Kings for times to come: And the King made no less benefit of estoppel against the English Clergy that otherwise might have opposed him, and of assurance of those to him that were his friends, and of advantage against *Harold*, that had gotten the Crown *sine Ecclesiastica authoritate* and by that means had made Pope *Alexander* and all the Prelates of *England* his enemies.

M. Paris. 1. Ant. Brit. Eccles. 96.

M. Paris. 2.

But if all failed, yet the Duke had now a just cause of quarrel against *Harold* for breach of Oath and Covenant, wherein if *Harold* chanced to be vanquished, and the Crown offered it self fair; he might without breach of Conscience or modesty accept thereof, and be accounted happy in the finding, and wise in the receiving, rather than unjustly hardy in the forcing thereof.

Hist. vit. Eadm. 5.

thereof. And this might occasion the Duke to challenge *Harold* to single Combat, as if he would let all the World know that the quarrel was Personal, and not National.

But this mask soon fell off by the death of *Harold*, and the Duke must now explain himself, that it was the value of the English Crown, and not the Title that brought him over. For though he might seem as it were in the heat of the chase to be drawn to *London*, where the Crown was, and that he rather sought after his enemies than it; yet as soon as he perceived the Crown in his power, he disputed not the right, although that was *Edgar's*, but possessed himself of the long desired prey: and yet he did it in a mannerly way, as if he saw in it somewhat more than Gold and precious stones: for though he might have taken it by ravishment, yet he chose the way of wooing by a kind of mutual agreement. Thus this mighty Conquerour suffered himself to be conquered, and stooping under the Law of a Saxon King he became a King by lieve: wisely foreseeing that a Title gotten by Election is more certain, than that which is gotten by power.

CHAP. XLV.

That the title of the Norman Kings to the English Crown was by election.

SOme there are that build their opinion upon passionate notes of angry Writers, and do conclude that the Duke's way and Title was wholly by Conquest, and thence infer strange aphorisms of state destructive to the government of this Kingdom. Let the Reader please to peruse the ensuing particulars, and thence conclude as he shall see cause.

It will easily be granted that the Title of conquest was never further than the King's thoughts, if it ever entred therein; else wherefore did he pretend other Titles to the World? But because it may be thought that his wisdom would not suffer him to pretend what he intended, and yet in practice intended

not at what he did pretend: it will be the skill of the Reader to consider the manner of the first *William's* Coronation, and his succeeding government. His Coronation questionless was the same with that of the Ancient Saxon Kings; for he was crowned in the Abbey of *Westminster* by the Arch-Bishop of *York*, because he of *Canterbury* was not Canonical. At his Coronation he made a solemn covenant to observe those Laws which were *bonæ & approbatæ & antiquæ leges Regni*, to defend the Church and Church-men, to govern all the people justly, to make and maintain righteous Laws, and to inhibit all spoil and unjust judgements. The people also entred into Covenant with him, That as well within the Land as without they would be faithful to their Lord King *William*, and in every place to keep with all fidelity his Lands and Honours, together with him, and against enemies and strangers to defend. It is the self same in substance with the fealty that the Saxons made to their Kings, as will appear by the paralelling them both together. The Saxons were sworn to defend the Kingdom against strangers and enemies, together with their Lord the King, and to preserve his Lands and Honours together with him with all faithfulness; so as by the Saxon way the allegiance first terminated on the Kingdom, and then as in order thereunto upon the King with his Lands and Honours: but the Norman either wholly omitted the first, as needless to be inserted in a municipal Law, it self being a Law in nature; or else includeth all within the words Lands and Honours, taking the same in a comprehensive sence for the whole Kingdom, and so made up the sum of the Saxon fealty in fewer figures. Which may seem the more probable of the twain, because little reason can be rendred why the King should restrain that defence to his private Lands (if he claimed all by conquest) when as all equally concerned him; or why he should exclude the publick, when as both himself and all he had was embarqued therein, and it might subsist without him, but contrarily not he without it, appeareth not to my understanding; nor did the thing enter into the King's purpose, if the file of his purposes be rightly considered: For speaking concerning Castles, Burroughs, and Cities, which

Hovedon. Eadmer. Hist. l. 1. p. 13. M. Paris: vit. Gulielm. Malmsb. l 3. fo. 154. Wigorn. An. 1066. Glossar. Ll. Gul. Spicil. 190.

which are in nature limbs of the Common-weal, he saith that they were built for the defence of the people and Kingdom; was this the service of walls and fortifications, and not much rather of men within those places of strength? Certainly the plain English is, that in time of breach of publick quiet and peace, the subjects were bound to defend the Kingdom, and in order thereto the people of the same, and of the King's right included in the publick defence; else it were a strange conclusion, that each man in particular, and in their own person alone was bound to defend the King's right; but being imbodied, the Kingdom. And yet more clearly it's apparent in that the service of the order of Knight-hood, which was the chief strength of the Nation in those days, was determined upon the service of the King, and defence of the Kingdom; or which is more plain, for the service of the King in or for defence of the Kingdom, as the statute of *Mortmain* expounds the same. But not to force the King's sence by argument; if the King had purposely omitted that clause of the Kingdoms safety as of inferiour regard to his own personal interest; it was one of his rashest digressions, wherein he soon espied his errour: for in the midst of his strong and conquering Army he held himself unassured, unless he had a better foundation than that which must change with the lives of a few at the utmost. And therefore besides the oath of fealty formerly mentioned he established a Law of association, that all free-men should be sworn Brethren; 1. To defend the Kingdom with their lives and fortunes against all enemies, to the utmost of their power. 2. To keep the peace and dignities of the Crown. 3. To maintain right and justice by all means, without deceit and delay. Joyn then these two Oaths together, *viz.* that of fealty, and this of fraternity; and it will easily appear, that the allegiance of the English to the Norman Kings was no other than what might stand with brotherhood, and tender regard of the publick above all: and differing from the Saxon fealty only in this, that, that was in one Oath, and this in two. Wherefore whatsoever respects steered in the rear of the King's course, it's less material so long as the van was right, albeit that the sequel will prove

Ll. Gul. Spicil. 61.

M. Paris. An. 1100, 1213.

Stat. 7. *E.* 1.

Ll. Guliel. Spicil. 59.

prove not much different from the premiſſes, as will appear in the foot of the whole account.

William Rufus. Thus entred the firſt Norman upon the Saxon Throne: and as he had ſome colour of right to countenance his courſe, ſo had his Son his Father's laſt Will, and yet he had as little right as he. This was *William Rufus* that was of his Father's way, but of a deeper die; and therefore might well be called *William Rufus*, or *Wiliam* in grain. He was exceeding happy in the fear or favour of the people, for he had nothing elſe to make room for his riſing. True it is he had the good will of his Father, but he was dead, and probably the people as little regarded it, as he did them. Nor was it ever obſerved that the Engliſh Crown was of ſo light account, as to paſs by deviſe of *ceſtui que uſe*; and therefore though it was deſigned to him from his Father, yet both right and poſſeſſion was left to the people to determine and maintain. The Clergy firſt led the way, having firſt taken a recogniſance of him for his good behaviour towards them, which he aſſured as far as large promiſes and proteſtations would ſerve the turn: and within one year after, ſtanding in need of the favour of the Commons (to maintain poſſeſſion againſt his Brother *Robert*) he gave them as good ſecurity as the Clergy had; which he kept in ſuch manner, that it was a wonder that one of ſo ſmall intereſt in the Title, but what he had by the peoples lieve and favour, ſhould rule in ſuch manner, and yet die a King: The favour of the people being like a meteor that muſt be continually fed, or it ſoon goes out and falls: for evident it is that the right of inheritance was his elder Brother *Robert's*, who was the braver man, and more experienced ſouldier; and upon theſe principles had obtained the love of the Norman Barons (the flower of his Father's Chivalry) and the liking of the Clergy, after they had found by experience the emptineſs of their hope in his Brother *William*, and was every way ſo ſuperiour to his Brother in advantages, as we are left to believe that *William* got the day without any other ground but only that God would ſo have it. It's true the Engliſh ſtuck cloſe to him; but how they were gained or contained, Writers ſpeak not, but tell us of his promiſes, which alſo they tell us were vain,

Eadmer. Hiſt. Wigorn. M. Paris.

M. Paris. An. 1088.

and

and never had issue further than would stand with his profit.

Exit William Rufus, and in comes his younger Brother *Henry* the first of that name: A Prince that excelled in wisdom, and by it ruled his courage, which served him so far as his aims and ends reached: His title was no better than his Father's or Brother's, but rather worse; for he had no colour of last will to propound him to the people, and his elder Brother *Robert* was still alive, and by his service of the Church in the War of *Jerusalem* might merit that respect of the Clergy, as not to permit him to be a loser by so well deserving service, as in those days that was accounted. Nevertheless the English look upon *Henry* as the fitter man for their turn; being now at hand and *Robert* at *Jerusalem*, and being a native born in *England*, civilized into the English garb by education, and of a wiser and fairer demeanour, and more inclining to peaceable government, which both Normans and English much inclined to as being weary of thirty years service in the Wars. And therefore it's not marvellous if they applied themselves to him in a way of capitulation, and less wonderful if he hearkned thereunto; and yet neither unadvisedly yielded unto by him, nor traiterously propounded by them, as some in zeal to Monarchy conclude the point. The worst of the whole matter resting in this, that the King bound himself to be just, that he might be great; and the people to submit unto Justice, that they might be free, like as their Ancestors were, and themselves by the Law established ought to be. For the capitulation was in substance settled by the ancient Laws of the Saxons mixed with some additions of Laws made by the King's Father, with the joynt advice of the grand Council of the Kingdom; all which both the Norman *Williams* had often confirmed by solemn protestations and promises, however their actions upon sudden surprisal were *malæ consuetudines* and *exactiones injustæ*, by this King's own acknowledgement. Thus these three Norman Kings made their way to the Throne; the first, by arms, under colour of title: the second, by a kind of Title, under colour of arms; and the last by favour: but all entred the same by capitulation, election, and stipulation; and for the general had

Henry first.

Matth. Paris 1100. Ladius. Speed.

Matth. Paris.

had some regard to suit their course in order of retaining the good will of their people, although in a different measure, according to the differency of occasions.

CHAP. XLVI.

That the government of the Normans proceeded upon the Saxon principles, and first of Parliaments.

THe principles which I mean, are these: First, the legislative power and influence thereof upon the whole. Secondly, the members of that government, with their several motions. Thirdly, the laws and customs or rules of those motions: and first concerning the legislative power. Although it be true that the first *William's* great and most constant labour was to have and to hold, and had but little time or liberty to enjoy, yet that time of rest which he had, he did apply it and himself in the setling of the Laws by the advice of Common-council: I say, not by advice of his own heart, or two or three Norman Lords, or of the Norman Nobility only, as some men take the confidence to aver, as if they had been eye-witnesses to the actions of those days: but by the joynt advise of the grand Council of the Lords and wise men of the Kingdom of *England*. I will not insist upon force of argument to shew that common reason must of necessity sway the King into this course, but shall reserve that to another place: the testimonies of Writers must now serve the turn: and herein the testimony of the Chronicle of *Liechfield* must have the first place, which speaks both of a Council of Lords, and saith that by their advice he caused to be summoned a meeting of all the Nobles and wise men through all the Counties of *England*, to set down their laws and customs. This was in the fourth year of his reign, or rather after his entry: and as soon as the Kingdom was brought into any reasonable posture of quiet: and which besides the intention of governing the Kingdom according unto Law doth strongly pretend that the Parliament had the

Spicileg. p. 5.

legislative

legislative power and right of cognisance, and judicature in those Laws that concerned the Kingdom in general; and for the particular Laws or Customs of several places or Precincts, it was referred to a Committee or Jury in every County to set them forth upon oath.

Secondly, that this Councel had power to change Laws may likewise appear in that Act made concerning the introduction of the Canon Law, which shews not only the power of that Council in Church-matters, but also that the Canon was no further in force than the same would allow; and this was also done by the Common council, and the Council of the Arch-Bishops, Bishops, Abbots, and all the Princes of the Kingdom; which connection shews plainly that there was Council besides that of the Prelates and Princes. *Spicil.* 167. *Fox. Mart.* l. 4.

Thirdly, in matters of general charge upon the whole body of the people, the King used also the help of this grand Council, as may especially appear in the charge of arms imposed upon the subjects; it's said it was done by the Common council of the whole Kingdom; as is witnessed even by the King's own Law. It may seem also that the grand Officers of the state were elected by such grand assembly of the wise men; for we find that *Lanfrank* was elected to the See of *Canterbury* by the assent of the Lords and Prelates, and of the whole people, that is, by the Parliament of *England*: and as probable it is that Bishops were therein also elected, for that the Bishop of *Liechfield* resigned his Bishoprick in such like assembly, if the meaning of *Lanfrank* be rightly understood, who saith in his Letter that it was in *conventu Episcoporum atque Laicorum.* *Ll. Gulielm.* c. 58. *Spicil.* *Antiq. Brit.* fo. 110. *Baron. Anal. An.* 1070.

Lastly, that one Law of this King's which may be called the first *Magna Charta* in the Norman times, by which the King reserved to himself from the free-men of this Kingdom nothing but their free service, in the conclusion saith that their Lands were thus granted to them in inheritance of the King by the Common council of the whole Kingdom, and so asserts in one the liberty of the free-men, and of the representative body of the Kingdom. These footsteps of the Parliament find we in the Conquerour's time, besides other more general intimations scattered amongst the Historians, which *Ll. Gulielm* c. 55.

may induce opinion to it's full ſtrength, that this King however Conquerour he was, yet made uſe of this additional power of Parliament to perfect his deſigns, and it may be more often than either of his Sons that yet had leſs pretence of ſuperlative power to countenance their proceedings.

William Rufus was a man of reſolution no whit inferiour, if not ſurpaſſing his Father, and had wit enough for any thing but to govern his deſires, which led him many times wild, and might occaſion conceit that he was almoſt a mad King, though he were a witty man; and therefore it's the leſs marvel if he uſed not the help of the Common-council more than needs muſt; where Kings many times are told of that which they are loth to know. Nevertheleſs *William* the ſecond could not paſs over thirteen years without a parley with his Commons and Clergy; unleſs he meant to adventure a parley between them and his Brother *Robert*, who like an Eagle eyed his poſture, though he hovered afar off.

But *Henry* the firſt was more wiſe, and being trained up even from the Cradle in the Engliſh garb, moralized by Learning, and now admitted into the Throne, found it the wiſeſt courſe to apply himſelf to the rule of an Engliſh King, *viz.* to win and maintain the good opinion of the people by conſorting together with them under one Law, and pledging himſelf thereto by taking unto Wife one of the Engliſh blood-royal: by this means he reſeiſed and reaſſumed the Engliſh in partnerſhip with the Norman in their ancient right of government; and reconciled the minds of the people under a lively hope of enjoying a ſettled government. Nor were they greatly deceived herein; for his courſe was leſs planetary than that of either of his predeceſſors, and yet we find little ſaid of his parley with his people in a Parliamentary way, although more of his Laws than of any of his predeceſſors. The reaſon will reſt in this, that the writers of thoſe times touch more upon matters of ordinary than political obſervation, and regarded rather the thing than the place or manner how. The Laws therefore although they are not entituled as made in Parliament, yet in the continuation of the Hiſtory of *Bede* it's noted that the King renewed or confirmed the ancient Laws in *Concilio peritorum & proborum*

proborum virorum regni Angliæ, which may give sufficent cause to suppose that he declined not the ancient way no more than he did the ancient Law. *Bede Hist. l. 3. c. 30.*

CHAP. XLVII.

Of the Franchise of the Church in the Normans time.

THe Canon Law that ever since *Austin*'s coming like Thunder rumbled in the Clouds, now breaks forth with confusion to all opposers. It had formerly made many fair proffers of service to this Island, but it was disaccepted as too stately to serve, yet by often courtesies received, it was allowed as a friend afar off. For the vast body of the Roman Empire like a body wasting with Age, died upward, and left the Britans to their own Laws before the second beast was grown, which being young was nourished under the Imperial Law of the first beast, till it grew as strong as it's dam, and began to prey for it self. The Empire perceiving it's grey hairs, and the youthful courage of this upstart, was glad to enter mutual league with it, the one to maintain the Ecclesiastical Monarchy of the other, and that the Imperial Monarchy of the former; and so became the Canon and Imperial Law to be united, and the professours to be *utriusque juris*. But this parity continued not long; the young beast looked like a Lamb, but spake like a Lyon; and contrarily the Eagle had cast it's Feathers and could towre no more; so as by this time the Pope was too good for the Emperour, and the Canon Law above the Imperial; yet allowing it to serve the turn: and so the professours of both Laws became Students in the Civil but practisers of the Canon. This composition thus made beyond the Seas, the great work was how to transport it over into this Isle: for the Emperour could entitle the Pope to no power here, because none he had. *Austin* the Monk undertakes the work; he offers it to the Britans under the goodly Title of Universal Bishop: but they kept themselves out

of Canon-shot. The Saxons allowed the Title, but liked not the power; The Monk observed the stop, and left time to work out that which present cunning could not, being content for the present that a league of cohabitation should be made between the two Swords, though the spiritual were for the present underling, not despairing that it would work out it's own way over the Saxon Law, as it had done over the Imperial. Nor did his conceit altogether fail; for the Saxons by little allowed much, and the Danes more; although the main was preserved until the Normans came upon the stage, who made their way by the Pope's lieve, and gave him a colour of somewhat more than ever any of their Saxon predecessors had done; and to gain the more quiet possession of the Crown to themselves, allowed the Pope the honour of their Council learned to draw the conveyance: which as some think was made advantageously for the Pope himself in point of tenure, but more probably in the covenants. For the Conqueror was scarce settled in his seat, but the Canon Law began to speak in the voice of a Royal Law: First complaining of misgovernment, as if the Church were extremely wronged by having the same way and Law of Trial with the Commons of *England*, and then propounds four several expedients, enough to have undone the whole Common-weal in the very entrance: had not the superstition of those times blinded both Parliament and people, and rendred them willing with that which their successours in future ages often repented of.

1. Edw. c. 3.

Spicil. 167.

Fox Mart. l. 4.

No offence against the Bishops Laws shall be handled in the Hundred.

By the Saxon Law Church-matters had the preheminence both in the Hundred, and in the County, and it was the Bishop's duty to joyn with the Sheriff in those Courts, to direct and see to the administration of Justice: and yet the Canon had been above three hundred years foregoing in the negative.

No case concerning the Regiment of Souls shall be brought before the Secular Judge.

The Regiment of Souls was a common place sufficient to contain any thing that was in order thereunto: and so every one that hath a Soul must be no more responsal unto the temporal

temporal Judge for any matter concerning it, but unto the Eccleſiaſtical power: and this not only in caſe of ſcandal, as againſt the moral Law or rule of Faith, but for diſobedience done to the Canons, made afar off, concerning any geſture or garb that may come within the ſavour of an Eccleſiaſtical conceit.

That all delinquents againſt the Biſhops Laws ſhall anſwer the fact in a place appointed by the Biſhop to that end.

So as now the Biſhop hath gotten a Court by the Statute Law that had formerly no other Cards to ſhew but that of the Canon, and a Court of ſuch place as the Biſhop ſhall appoint, however inconvenient for diſtance or uncertainty it be.

That the trial of ſuch matters ſhall be according to the law of the Canon, and not according to that of the Hundred.

That is, not by Jury, but by witneſſes, in a clandeſtine way if the Biſhop pleaſe, or without any accuſer, or by more ſcrutiny, or any other way that may reſerve the Lay-man to the breaſt of a prepoſſeſſed ſpirit of the ſpiritual Judge. And thus the poor Countrey-man is expoſed to the cenſure of an unknown Law in an unknown Tongue, by an unknown way; wherein they had no footing but by an implicit faith: And herein the providence of God (I imagine) was more manifeſt than the wiſdom of Man, which was too weak to foreſee events at ſo great a diſtance; For queſtionleſs it was a point of excellent wiſdom for the people (now under a King of a rugged nature that would not ſtick to catch whatſoever he could get) to depoſit part of their liberties into the hands of the Clergy; from whom the moderation might be expected as from friends and neighbours, and (as partners in one ſhip) mutual engagement to withſtand the waves of prerogative of Kings that ſeldom reſts till they break all banks, and ſometimes over-reaches it's own guard, and cannot return when it would. And thus it fell out; for many times the Pope and Clergy became protectors of the peoples liberties, and kept them ſafe from the rage of Kings, until the time of reſtitution ſhould come; and became not only a wall of defence to the one, but a rock of offence to the other. For the Tripple Crown could never ſolder with the Engliſh, nor it with that; the ſtrife was

for

for prerogative, wherein if the Clergy gained, the Crown loſt, and no moderation would be allowed. For the conquering King was ſcarce warm in his Throne when as the Pope demanded fealty of him for the Crown of *England*, and the King's own good Arch-Biſhop and friend *Lanfrank* delivered the meſſage; as alſo *Anſelm* did afterwards to *William Rufus*, which though theſe Kings had courage enough to deny, yet it ſhewed plainly that the Popes meaned no leſs game than Crown-glieke with the King and people, the Arch-Biſhops and Biſhops holding the Cards for the Pope, while in the interim he overſaw all. The Norman Kings thus braved, paid the Popes in their own Coyn, and refuſed to acknowledge any Pope but ſuch as are firſt allowed by their concurrence.

Spicil. 164. *Baronius Annal. An.* 1068.

Eadmer. Hiſt. l. 1 *p.* 25.

Thus have we the ſecond bravado of the Canon Law; for as yet it was not ſo fully entered, as it ſeemed. The words of the Act of Parliament it's true were general; yet their ſence was left to time to expound, and the courſe of ſucceeding affairs nevertheleſs paſſed with a *non obſtante*. For whereas in thoſe days the Clergy claimed both legiſlative and executory power in Church-matters, the Normans would allow of neither, but claimed both as of right belonging to the Imperial power of this Iſland, originally and only. As touching the legiſlative power, it's evident that notwithſtanding the Canon that had long before this time voted the Laity from having to do with Church-matters; yet the Norman Kings would never allow to the Metropolitans the power of calling Synods nor ſuch meetings, but by their lieve, although it was earneſtly contended for. Neither could the Clergy prevail to exclude the Laity out of their Synods, being aſſembled, nor from their wonted privilege of voting therein; albeit that for a long time by Canon it had been contradicted. The differences between the Clergy and the Kings concerning theſe and other matters grew ſo hot, that Kings liked not to have any Synods or meetings of publick Council; and Arch-Biſhop *Anſelm* complained that *William Rufus* would not allow any to be called for thirteen years together: which by the file of ſtory, compared with that Epiſtle, made up the King's whole Reign.

Eadmer. Hiſt. p. 6. *&* 24. *Spicil.* 163.

Epiſt. ad Paſcal. p p.

Reign. And this was queſtionleſs the cauſe that we find ſo little touch upon Parliamentary aſſemblies in the Norman times, Kings being too high to be controuled, and Biſhops too proud to obey; but neceſſity of State, like unto fate prevails againſt all other intereſts whatſoever; and the wiſdom of *Henry* the firſt in this prevailed above that of his predeceſſors, as far as their will was beyond his. For it was bootleſs for him to hold out againſt the Church that ſtood in need of all ſorts to confirm to him that which common right (as then it was taken) denied him; and therefore (though it coſt him much trouble with *Anſelm*) he re-continued the liberty of publick conſultations, and yet maintained his dignity and honour ſeemly well. I ſhall not need to clear this by particulars, for beſides the publick conſultations at his entrance, and twice after that, for ſupply or aid for his Wars, and the marriage of his daughter with the Emperour, it's obſerved that the Arch-Biſhop of *Canterbury* ſummoned a Council at *Weſtminſter*, but it was *authoritate Regia*, and that there aſſembled *magnæ multitudines Clericorum, Laicorum, tam divitum quam mediocrium*; and that upon the third day the debate was *de negotiis ſæcularibus nonnullis*: The iſſue of all was, that ſome things were *determinata*, others *dilata*, and other matters *propter nimium æſtuantis turbæ tumultum ab audientia judicantium profligata*. Out of which may be probably concluded, 1. That the Laity as yet were preſent in Councils with the Clergy. 2. That they were all in one place. 3. That they all had votes, and that the major number concluded the matter. 4. That certain perſons uſed to determine of the major number by the hearing, and that the votes were ſtill *clamore non calculis*. 5. That they held an order in debating of affairs, *viz.* on ſome days Eccleſiaſtical, and on other days ſecular. 6. That all matters concluded were atteſted by the King, who as 'tis ſaid, did give his conſent, and by his authority did grant and confirm the ſame. And upon the whole matter it will be probable that as yet Councils, and thoſe now called Parliaments differed not in kind, although poſſibly there might be difference of names, in regard that ſome might be immediately and mainly occaſioned, and urged by Temporal exigences, and others by

Conten. Wigorn. An. 1127.

Eccle-

Eccleſiaſtical; but whether Temporal or Eccleſiaſtical the firſt occaſion was, yet in their meetings they handled both as occaſion offered it ſelf.

Secondly, as the Clergy could not attain the ſole legiſlative power, ſo neither had they the ſole juridical power in Eccleſiaſtical cauſes; for not only in caſe of errour in the Eccleſiaſtical Courts was an appeal reſerved to the King's Court, as formerly in the Saxons time: but even thoſe things which ſeemed properly of Eccleſiaſtical cogniſance were poſſeſſed by the King's Court in the firſt inſtance, as that of *Peter-pence*, which was a Church-tribute, & might be claimed to be properly the Church cogniſance much rather than Tythes; and yet by the Law of this Kingdom in the Conquerour's time it is eſpecially provided, that defaults of payment of that duty ſhall be amended in the King's Court, and a fine for default was given to the King, albeit that the Biſhop was made the Collector, and the Pope the Proprietor. And many other particulars, which were holden to be of Eccleſiaſtical cogniſance, Kings would draw them within the compaſs of maintaining the peace of the Church, which properly belonged to them to defend; and ſo had the cogniſance of them in their own Courts, and fines for invaſion of the Church-rights. But becauſe this may ſeem but colourable, and by way of flattery of the Churches right, and not in oppoſition thereof: In other things it will appear plainly that Kings were not nice in vindicating their own claim in matters which the Clergy held theirs *quarto modo*, as namely in the caſe of excommunication, a weapon firſt faſhioned by the Church-men, and in the exerciſe whereof themſelves were in repute the only maſters; and yet in this were maſtered by Kings, whoſe Laws directed and reſtrained the ſwelling of that cenſure, and made it keep meaſure; whoſe Tenants and Officers or ſervants muſt not be meddled with by this cenſure, but by the King's lieve; nor muſt they be called to anſwer but in the King's Court. That right ſtill remained to them after the ſpoil made by the Hierarchy upon the rights of all the reſt of the free-men, and therefore could not of right be called *nova* in the Hiſtorians ſence: ſeeing that it was no other than the ancient cuſtom uſed amongſt the

Ll Gulielm. c. 20.
Spel. 180.
Fadmer. Hiſt. p. 6.
Ll. H 1 cap. 5.

the Saxons before that the Clergy had either purpose or power to reach at such a height as afterwards by degrees they attained unto. Furthermore, the Hierarchy as they neither could possess the legislative nor juridical power in Church-matters; so neither could they possess themselves: for as yet they were the King's men, and the more the King's men, because they now think a Bishoprick but a naked commodity, if not robed with a Barony. Nevertheless, before that ever they knew that honour, whatever the Canon was for their election, yet both their Title and power *de facto* was derived to them from the Kings, who also invested them with Staff and Ring; nor had the Pope as yet (though he had conquered the Hierarchy) possessed himself of their colours: but during all the Norman times the Kings maintained that Trophy of the right they had from their Predecessors, notwithstanding the many assaults from *Rome*, and treacheries of the Cathedrals within the Realm; and albeit sometimes Kings were too weak to hold the shadow, yet the convention of the States did maintain the substance, *viz.* the right of Election without intermission, as the examples of *Lanfrank* unto the See of *Canterbury*, and *Anselm* and *Ralph* his successors, and of *Thomas* into the See of *York*, and *Ralph* coadjutor to *Thurstan* Arch-Bishop of the same See, and of *Gilbert* into the See of *London*, besides others, do sufficiently set forth: whether it was because the convention of States was more stout, or that the Bishops now wedded to Temporal Baronies were so unquestionably interessed in the publick affairs of the Commonweal, that it was against common sense to deny the States their vote and cognisance of their election, I cannot determine; yet it is a certain truth, the more Baron, the less Bishop, and more unmeet for the service of *Rome:* politickly therefore it was done by Kings to hold these men by a Golden hook, that otherwise had prostituted themselves to a foreign power, and proved absolute deserters of their Countries cause, which now they must maintain under peril of the loss of their own honour.

Eadmer. Hist. l. 2. p. 53. & l. 3. & l. 4. Eadmer. Hist. l. 1. & l. 5. Wigorn. An. 1128. Spicil. 142.

In the next place, as they were the King's men, so their Bishopricks and Dioceses were under the King's power to order,

as by the advice of the Bishops and Baronage should be thought most convenient; either to endow another Bishop with part thereof and so to make two Dioceſſes of one, as befel in the case of the Dioceſs of *Lincoln*, out of which the Dioceſs of *Ely* budded in the time of *Henry* the first, or to endow a Monastery or other Religious foundation with part, and exempt the same from all Episcopal or ordinary jurisdiction, as in the example of the foundation of the Abby of *Battal* in *Suſſex*, in the time of *William* the Conquerour may appear.

Eadm. l. 4. p. 95. 96.

Spicil. 165.

Lastly, what ever the first intention of this recited Statute were, it may probably be judged, that it was but a noise to still the Clergy; and that it never had more than a liveleſs shape, not only in regard of the before-mentioned particulars, but especially in regard of that subservient Law of *Henry* the first concerning the County court, which reciteth it as a custom in his time used, that the Bishop and Earls, with other the chief men of that County were there present as assistants in directory of judgement. And that in order are handled first matters of the Church: Secondly, Crown pleas: Thirdly, and lastly, Common pleas; however therefore the Kings spake fair, they either acted not at all, or so cooly as the current of the custom was too strong; but most probable it is, that the Kings spake fair till they were settled in their Thrones, and afterwards pleased themselves: for by the general thred of story it may appear that the Clergy in those times were more feared than loved, and therefore ridden with a strait Reign. The Prelacy on the contrary grew unruly, yet too weak for the rugged spirits of the Norman Kings; they are glad to be quiet, and the Pope himself to drive fair and softly, as judging it expedient *potestatem Regalem mitius tractandam*, and continued that course and posture till the calmer times of *Henry* the first; wherein they mended their pace, and got that without noise which they had long striven for, *viz.* the preheminence and presidency in the Synods, though the King himself be present, and (if the Historian writeth advisedly) the whole ordaining, or legislative power, for so runs the stile or phrase of the Authour, *Archiepiscopi & Episcopi statuerunt in præsentia Regis*, as if the presence of the King and his Barons and people, were but as a great

Ll Hen. 1. c. 7.

Greg. Fpist l. 9.

Eadmer. Hist. l. 4. p. 95.

Amen

Amen at the common prayer (after the old ſtamp) to ſet a good colour upon a doubtful matter to make it go down the better. How the Kings brooked this draught, I cannot ſay; but it hath made the Kingdom ſtagger ever ſince, and it may be feared will hardly recover it's perfect wits, ſo long as the brains of the Clergy and the Laity thus lie divided in ſeveral Cells.

CHAP. XLVIII.

Of the ſeveral ſubſervient jurisdictions by Provinces, Marches, Counties, Hundreds, Burroughs, Lordſhips, and Decennaries.

HAd the Normans owned no other Title than that of Conqueſt, doubtleſs their mother wit muſt needs have taught them the expediency of preſerving the particular ſubſervient jurisdictions of the Kingdom, entire and unquaſhed, if they regarded either the benefit of their conqueſt, or reward of their partners, and Allies: unleſs it ſhould be allowed unto Conquerours, to be more honourable for them to do what they will, rather than what is meet. But hereof there is no cauſe of queſtion in this preſent ſubject: for nothing is more clear than that *Wales* enjoyed in the Conquerour's time, and for ages after him, it's ancient liberties, Tribute excepted; nor did conqueſt ever come ſo nigh to their borders as to trench upon the liberties of the Marches. For as it had been a piece of ſtate nonſence to have holden two peoples under conqueſt, and their Marches in freedom; or to preſerve them in good Neighbourhood by Marches, which by the Law of Conqueſt were made one: ſo was it no leſs vain if all had been once ſubdued by conqueſt, to have raiſed up the Liberties of the Marches any more.

And as they had leſs cauſe to have invaded the bounds and ancient limits and partitions of the Counties, ſo queſtionleſs had they ſo done, they would have taken the old courſe of *County courts.*

Eadmer Hist. l. 4. p. 96. the *Micklemote*, as they did divide the Dioceſs of *Lincoln* into two Dioceſſes by advice of the Biſhops, Princes, and other wiſe and holy men, and turned the Abby of *Ely* into a Biſhop's See.

Ll. Hen. 1. c. 6. But it was their wiſdom to preſerve the ancient Land-marks; and no leſs both wiſdom and care to continue their due priviledges and intereſts to each. Every County had it's Court, and every Court it's wonted jurisdiction: No complaint muſt be to the King's Court, if right may be done in the County; no diſtreſs muſt be taken but by Warrant from the County, and that muſt be after complaint thrice made. The County court muſt be called as our Anceſtors have appointed: ſuch as will not come as they ought, ſhall be firſt ſummoned, and in caſe of default diſtrained; at the fourth default, the complainant ſhall be ſatisfied out of the diſtreſſes ſo taken, and the King alſo for his fine. Theſe are the expreſs Laws of the Conquerour's own eſtabliſhment; the laſt of which alſo was confirmed by another expreſs Law, ſaving that he would allow but of two ſummons and two diſtreſſes, before execution. And as it was one principal work that he undertook to reduce the Laws into courſe, which had been intermitted during the violent times of his Father and Brother (the firſt of whom never had liberty for reformation, and the latter never had will) ſo amongſt other Laws he ſettled thoſe concerning the County-court, namely, *That the Biſhops, Earls, and chief men ſhould be preſent for direction. 2. That it ſhould be holden once each month. 3. That the Church matters ſhould precede, and then the Crown Pleas. And laſtly, the Commen Pleas*; beſides ſome other particulars concerning pleading, and proceedings in the handling of cauſes. Neither were theſe cauſes of a petty regard only, but of greateſt concernment: One example I ſhall remember the Reader of, and not recite *in terminis*, but refer to Mr. *Selden*'s own Pen. The occaſion was this: *Odo* the Conquerour's half Brother was by him made Earl of *Kent*, and therewith had the gift of a large Territory in *Kent*; and taking advantage of the King's diſpleaſure at the Arch-Biſhop of *Canterbury*, poſſeſſed himſelf by diſſeiſin of divers Lands and Tenements belonging to that See: *Lanfrank* the ſucceeding Arch-Biſhop being informed hereof: petitioned to the King that Juſtice might be done him *ſecundum legem*.

Ll. Gulielm. cap. 41. & 42.

Ll. Gulielm. cap. 64.

Ibid. c. 64.

Ll. Hen. 1 c. 7.

Spicil. 197.

Stigand.

legem terræ: And the King ſends forth his Writ to ſummon a County court: the debate laſted three days before the Free-men of the County of *Kent*, in the preſence of many chief men, Biſhops and Lords, and others skilful in the Laws; and the judgement paſſed for the Arch-Biſhop *Lanfrank* upon the votes of the Free-men. This County court was holden by ſpecial ſummons, and not by adjournment, as was allowable by the Saxon Law upon ſpecial occaſions: And this ſuit was originally begun, and had it's final determination in the County-court, and not brought by a Tolt out of the Hundred court, as is ſuppoſed by an Honourable reporter; nor by the ancient Laws could the ſuit commence in the Hundred, becauſe the Lands and Tenements did lie in ſeveral Hundreds and Counties. The upſhot of all is that the County courts in thoſe days were of ſo great eſteem that two of the greateſt Peers of the Realm, one a Norman, the other an Italian, did caſt a Title in fifteen Mannors, two Townſhips, with many liberties upon the votes of the Free-holders in a County court, and that the ſentence was allowed and commended by the King, and ſubmitted to by all.

Hundred court.

In the next place we are to come to the Hundred Courts, of which there are by the Normans allowed two ſorts; the firſt whereof was holden twice a year: This was formerly called the Torn, and was the Sheriff's Court; hereof little notice is taken, ſaving that by the Laws of *Henry* the firſt it's work ſeems to be much deſigned to the view of free pledges. But the more ordinary Court, is that which belongs to the Lord of the Hundred, unto whom alſo belong the Fines in caſes there concerned.

Ll. Hen. 1 c 8.

This Court is to be holden once in each month: and no ſuit to be begun in the King's Court that regularly ought to begin in the Hundred. No Diſtringas ſhall iſſue forth till three demands made in the Hundred. And three diſtreſſes ſhall then iſſue forth; and if upon the fourth the party appear not, execution ſhall be by ſale of the diſtreſs, and the complainant ſhall receive ſatisfaction.

Ll. Gulielm. cap. 41. Ll. Hen. 1 c. 7. Ll. Gulielm. cap. 41. Ll. Gulielm. cap. 42.

But by the latter Laws of the ſame King there are but two ſummons allowed, and then two diſtreſſes; and in caſe no appearance be, execution ſhall be for the complainant, and for the King's fine.

Ll. Hen. 1. c. 64.

Laſtly,

Ll.Hen. 1.c.7. Laſtly, as the caſe concerned either perſons or places, ſometimes they uſed to joyn ſeveral Hundreds together into one Court: but this was by ſpecial Commiſſion or Writ.

Courts of Towns and Mannors. *Ll.Hen.*1.c.7. As touching inferiour Courts of Towns and Mannors, there's little obſervation to be had, being of too private a regard to come into fame in thoſe rough times: yet in *Henry* the firſt's Laws it's ordered that Town courts ſhould meet every month; and that Lords ſhould hold Plea's either in their own perſons, or by their Stewards, and that the chief man in that Pariſh, with four other of the chiefer ſort, and the Miniſter or Pariſh Prieſt ſhould joyn their aſſiſtance in that work.

Decenners. But in nothing more did the Norman Kings ſhew their paternal love to the Common-weal, than in the Law of pledges or Decenners: for as of all other beauties it ſuffered moſt blemiſh from the ſtorm of the Norman invaſion: ſo was it their eſpecial care to renew the life thereof, not now amongſt the Natives only, but joyning the Normans to the Saxons in the ſame bond of brotherhood, utterly drowned thereby all memory of Lordly power, and ſo of divers peoples making one, conquered even conqueſt it ſelf, if any were, and made all joynt-partners in one common liberty.

Ll. Gulielm. cap. 64 Every Free-man muſt be under pledges to ſatisfie juſtice in caſe of delinquency.

*Ll.Hen.*1.c.8. Over every nine perſons under pledges there muſt be one man in Authority.

View of free pledges muſt be to ſee that the Decennaries be full; and if any be departed, to enquire the cauſe: and if any be come in, whether he be under pledges or not.

And thus the Norman Kings had their people under treble guard: one of fealty, the other of aſſociation, and the third that of pledges; and all little enough to ſecure that which they in their own conſciences might have ſome cauſe to queſtion, whether it belonged to them or not.

CHAP.

CHAP. XLIX.

Of the immunities of the Saxon Free-men under the Norman government.

THe freedom of an Engliſh-man conſiſteth in three particulars: Firſt, in ownerſhip of what he hath. Secondly, in voting any Law whereby that ownerſhip is to be maintained: and thirdly, in having an influence upon that Judicatory power that muſt apply that Law. Now that the Engliſh under the Normans enjoyed all this freedom unto each Man's own particular, beſides what they had in bodies aggregate, may appear, as followeth: The Free-men of *England* were ſuch as either joyned in the War with *Harold* againſt the Normans: or ſuch as abſented themſelves from the way of oppoſition or enmity, and were either waiting upon their own affairs, or ſiding with the Normans: and queſtionleſs all the ſadneſs of the War befel the firſt ſort of the Engliſh: whoſe perſons and Eſtates (to make the ways of the firſt Norman *William* regular, and of one piece) never fell ſo low as to come under the Law (or rather the will) of conqueſt: but in their worſt condition were in truth within the directory of the Law of forfeiture for Treaſon againſt their Soveraign Lord, whoſe claim was by Title, as hath been already noted. The other ſort either did appear to be the Normans friends, or for ought appeared ſo were: and ſo never offending the Law never ſuffered any penalty: but held their perſons and poſſeſſions ſtill under the patronage of Law, as anciently they and their Anceſtors had done. and that this was the Normans meaning, they publiſh the ſame to the World in a fundamental Law, whereby is granted, That all the Free-men of the whole Kingdom ſhall have and hold their Lands and poſſeſſions in hereditary right for ever. *Ll. Guhelm. cap. 55.*

And by this being ſecured againſt forfeiture, they are further ſaved from all wrong by the ſame Law, which provideth,

That they ſhall hold them well or quietly, and in peace free from.

from all unjuſt Tax, and from all Tallage, ſo as nothing ſhall be exacted nor taken, but their free ſervice which by right they are bound to perform.

This is expounded in the Laws of *H. 1. cap.* 4. that no Tribute or Tax ſhall be taken, but what was due in the Confeſſor's time.

Under the word Tax is underſtood *monetagium commune per civitates*, or *comitatus*; ſo as aids and eſcuage are not included, for they are not charged upon Counties and Cities, but upon Tenures in Knight-ſervice: nor was Dane guelt hereby taken away, for that was a Tax in the Confeſſor's time, and granted by Parliament.

So then the Norman Kings claimed no other right in the Lands and poſſeſſions of any of their ſubjects, than under and by the Law or common right; and they conclude the Law with a *ſicut*, which I thus Engliſh, As it is enacted to them, (or agreed by them) and unto them by us given and granted by the Common council of our whole Kingdom. I leave the words to be criticized upon as the Reader ſhall pleaſe; being well aſſured that the moſt ſtrained ſence can reach no further than to make it ſound as an eſtoppel or concluſion to the King and his ſucceſſors, to make any further claim unto the eſtates of his Subjects than by Law or right is warrantable; under which notion conqueſt never did nor can come, as ſhall more fully be manifeſted hereafter. But the right genius of this Law will alſo more evidently appear by the practice of thoſe times, which even when Juſtice it ſelf did moſt importune, ſo tenderly regarded the liberty of mens eſtates, that no diſtreſs could iſſue without publick warrant obtained, and upon three complaints firſt made, and right not done; and when rape and plunder was in the heat, and men might ſeem to have no more right than they had power to maintain: yet even then this Law was refuge ſufficient for ſuch as were oppreſſed; and was pleaded in bar againſt all uſurpations and intruſions, under pretext of the Conquerour's right whatſoever, as by the caſe of *Edwin* of *Sharneburn* may appear. Secondly, that the Free-men of *England* had vote in the making of Laws, by which *meum* and *tuum* was bounded and maintained

Statutum eſt eis, & illis à nobis datum & conceſſum per commune concilium totius Regni Noſtri.

Ll. Gulielm. cap. 42. & 45.

Cloſſ. 227. *Camb. Brit. Norf.*

ned, as may appear by what hath been already ſaid; nor ſhall I endeavour further therein. Thirdly, they had an influence upon the judicatory power; for Firſt, the matter in fact was determined by the votes of the Free-men, as the Laws of the Conquerour, and of *Henry* the firſt do ſufficiently manifeſt. Secondly, they had an influence in the making of the Sheriff, who as well as the Biſhop was by election of the people. Thirdly, they had an influence upon all Judges, by ſetting a penal Law upon them in caſe of corruption; which if not ſo penal as to take away life, was nevertheleſs penal enough to make an unjuſt Judge to be a living pattern and example of miſery, to teach others to beware. *Ll. Gulielm. cap. 15*

Two things more muſt be added, though ſomewhat collateral to this purpoſe. Concerning the right of the Free-men in the common Mint, and in their villains. Concerning the Mint, that the Saxons having made it as parcel of the demeſnes of the Kingdom, and leaving to the King only an overſeerſhip, reſerved the controul and chief ſurvey thereof to the grand Council of the Kingdom, who had ſtated the ſame in the Confeſſor's time. But after him the Normans changed the current according to their own liking, till by *Henry* the firſt, it was reduced into the ancient courſe, allowing no money but ſuch as was current in the days of the Confeſſor, whoſe Laws alſo (with ſome alterations by the Conquerour, with common advice) he alſo eſtabliſhed. Concerning the Lords right to their villains it is obſervable, Firſt, that liberty of infranchiſement was allowed, which could never have been, had not the liberty of the ſubject been ſaved. Secondly, that Infranchiſement properly is the work of the people, or the body, and the Lord was to deliver his villain by his right hand unto the Sheriff in full County court, and pronounce him free from his ſervice, and ſhall make room for him by free paſſage and open doors, and deliver him free arms, *viz.* a Lance and a Sword, and then he is made a Free man, as I conceive, to all intents and purpoſes. Otherwiſe there might be manumiſſion, as if the villain remained in a City, Burrough, walled Town, or Caſtle by a ſpace of a year and a day, and no claim made to his ſervice by his Lord, he ſhall be thence- *Ll. Æthelſt. c. 6.* *Ll. Æthelr. c. 22.* *Ll. Hen. 1.* *Ll. Gulielm. cap. 65 & 66* *Ll. Gulielm. c. 66.*

forth free from the service of his Lord for ever; and yet this manumission could not conclude any but the Lord and his heirs or assignes: nor could it enforce the body to allow that for a member which was none before. Thirdly, that notwithstanding they allowed the Lords liberty of infranchisement, yet would they not allow them free liberty of disposing them as other Chattels: nor by the Law of the Conquerour might they sell their villains out of the Countrey, or beyond Sea, for the King had right to the mediate service of every villain, though the Lord had the immediate; and therefore that Law might hold in force: nevertheless the Ordinance that *Anselm* made, that no Lord should sell his villain, they would never allow for a Law, nor did it hold in force.

Ll. Gulielm. 65.

CHAP. L.

A recollection of certain Norman Laws, concerning the Crown in relation to those of the Saxons formerly mentioned.

I Call them Norman Laws, because they were allowed by them or continued in force, although many of them had their original from the Saxons.

First and second Commandements 1.

One God must be worshipped; and one faith of Christ maintained throughout the whole Kingdom.

This is found amongst the Laws of King *William* published by Mr. *Selden*, and was for substance in the Saxons time, saving that we find it not annexed to the Crown summarily until now; so as by this Law Heresie and Idolatry became Crown pleas; and the like may be collected concerning blasphemy, concerning which it's said, as of the servant's killing his Lord, that it's impardonable: nor could any man offend herein, but it endangered his whole estate. The trial of these crimes is not found particularly set forth. It might possibly be in the meeting

Ll. Gulielm c. 51.

Ll. Hen. 1. c. 75

meeting of the Clergy, and as poſſibly in the County court of the Torne where the Biſhop was preſent *Jura Divina edocere.*

Peter-pence, Cirickſceate, and Tythes, muſt be duly paid. 2.

Theſe are all Saxon Laws united to the cogniſance of the Crown, as formerly hath been ſhewed: Only the firſt *William* eſpecially provided, that in caſe any man worth thirty pence in chattels did pay four pence for his part; it ſhould be ſufficient both for himſelf and his retinue, whether ſervants or retainers: and defaults in payment of theſe duties were finable to the King. *Ll. Gul. c. 18. & c. 20. Ll. Hen. 1. c. 10*

Invaſion upon the right of Sanctuary fined. 3.

This I note, not ſo much in relation to any ſuch law amongſt the Saxons, as to the future cuſtom, which now began to alter, according to the increaſe or wane of the Moon. I do not find this miſdemeanour to be formerly ſo much taken to heart by the Crown; nor poſſibly would it have been at this time, but that the King muſt protect the Church, if he mean to be protected by it: and it was taken kindly by the Churchmen, till they found they were able enough to defend their own right by themſelves. Amongſt all the reſt of Church rights this one eſpecially is confirmed, *viz.* That any delinquent ſhall have liberty of Sanctuary to enjoy both life and member, notwithſtanding any Law to the contrary. This privilege was claimed by the Canons; but it muſt be granted by the Temporal power, or elſe it could not be had: and though it be true that Kings formerly did by their Charters of foundation grant ſuch privileges in particular; yet could not ſuch grants create ſuch immunities contrary unto, or notwithſtanding any publick Law of the Kingdom; and therefore the Monaſteries had their foundations confirmed by Parliament, or general aſſembly of wiſe men, if the firſt foundation was not laid thereon. *Ll. Gulielm. cap. 1.*

Working upon the Feaſt-days puniſhed by fine. 4. *Commandement.*

 Ll. Hen. 1. c. 10

Before this time no days for ſolemn worſhip of God were acknowledged by the Law of the Kingdom but the Lord's days. By this all days celebrated or inſtituted by the Church for that purpoſe are defended by the civil power, and breach of the holy obſervation of theſe days made enquirable, and puniſhed amongſt other pleas of the Crown.

6. Commandement.

Breach of the peace, bloodſhed, and manſlaughter, puniſhed by fine.

This was the ancient Law of the Saxons, and was continued without alteration till about *Alfred's* time, whoſe zeal againſt blood cauſed murther to be puniſhed with death; but the Danes bringing in a moderation, if it may rightly be ſo called, are now ſeconded by their kinred the Normans, who will not admit of puniſhment by death, partly becauſe being a warlike people, bloodſhed might ſeem to rank it ſelf under the Regiment of valour; and partly becauſe they owed much to that Title for the poſſeſſion of all that they had gotten in *England*. And to prevent ſcandal, entring upon the rear, opinion ſtept in, that a miſerable life was more penal than death; and therefore in crimes of the deepeſt die they would to fine and loſs of member: and which courſe prevailed moſt, either to ſtop or enlarge the courſe of that ſin, was left to the diſpoſition of ſuch as intended to make trial. But in matters of leſs malignancy the purſe rather ſmarted than the body, wherein they proceeded ſo far as to puniſhment of death by violence; yet was not the fine to be meaſured by the judgement of the mercy or rigour of any perſon, but only of the Law it ſelf, which ſet down in certainty both the nature and quantity of the fine; and left that memorial upon record of a good mind at leaſt to an equitable and juſt government. In all theſe caſes of breach of peace the King's Court becomes poſſeſſed of the right of cogniſance, and the peace is now called the King's peace; not ſo much becauſe that it is left only to his providential care to maintain, as becauſe the fines for moſt of thoſe crimes pertained to the King: for otherwiſe there is a ſort of crimes that are *contra pacem vicecomitis*, as will be more cleared hereafter. *p. 196.*

Ll. Gulielm. cap. 67.

Ibid.

Miror 254. Ll. Gulielm. c. 8. 10, 12, 13, &c.

Ll. Gulielm. cap. 3.

I shall conclude this subject with these three observations: First, that the Laws in those ancient times of the Normans were so general, as they then made no difference between places or persons; but whether the peace was broken upon holy or common ground, or upon a Lay-man, or one in orders, the Lay power seised upon all. The second is the care they had for apprehending of the offenders in this kind. If the party slain were a Norman or Frenchman, the Lord of the manslayer was charged to have him forthcoming within a certain time, or pay the King's fine of 46. Marks so long as he had wherewith to satisfie, and for what remained the whole Hundred was charged. But if the party slain were of any other people, the Hundred was immediately charged with the manslayer, and must bring him to answer within a certain time, or pay the King's fine. The third and last is, the care they had to prevent breach of peace for the future: First in settling of night watches by all Cities, Burroughs, Castles, and Hundreds in such manner as the Sheriff or chief Officers by Common council shall advise for the best safety of the Kingdom. Secondly, in forbidding entertainment of unknown persons above three days without surety for their good abearance, or becoming their pledge for the publick safety, nor to let any persons pass away without testimony, under the minister's and neighbours hand of their good carriage.

Ll. Hen. 1. c. 10

Ll. Gulielm. ca. 53.

Ll. Gulielm. cap. 26.

Ll. Gulielm. cap. 56.

Ll. Gulielm. cap. 46

Ll. Hen. 1. c. 8.

A man committing Adultery with a married Woman shall forfeit to his Lord the price of his life.

7. Commandement.

This made the crime enquirable at the common Law as an offence *contra pacem Domini*; but afterward it was finable to the King, and enquirable amongst the pleas of the Crown by the Law of *Henry* the first.

1.

Ll. Gulielm. cap. 14.

Ll. Hen. 1. c 10

Force upon a Woman, to the intent to ravish her, is finable; but if a Rape be committed, it shall be punished with loss of member.

2.

Ll. Gul. c. 19.

The crime and offences against this Commandement were always punished in the Temporal Courts, by fine at the least; and are still in the Normans time prosecuted in the same way not-

notwithstanding the growing authority of the Canon,

8. *Commandement.* Robbery is finable.

The different Law between the Saxons, Angles and Danes, now by the Normans is settled in the more merciful way; and in case the delinquent made flight, the pledge satisfied the Law for him. But in the latter times of *Henry* the first the Law was again reduced to the punishment of this crime by death, and so hath continued.

Ll. Gulielm. cap. 4. Glanv l. 6. c. 6. Hovedon.

9. *Commandement.* There shall be true weights and measures throughout the Kingdom, and those shall be sealed.

Ll. Gulielm. c. 57. And this was the constant Saxon Law.

Ll. Hen. 1. c. 10 Perjury to be punished by fine, and as formerly still inquirable amongst the Crown pleas.

CHAP. LI.

The like of Laws that concern common interest of Goods.

Ll. Gulielm. cap. 6. 1. IF Cattel be taken by Distress the party that will replevy them shall pay for the return of the Cattel, and give security to bring the Distress into the Court, if within a year and a day it be demanded.

This Law I take to be intended where the Cattel are taken damage *feasant*; because nothing shall release the Distress in other cases, but obedience to the summons.

Ll. Gulielm. c. 42. 2. No Distress *ad comparendum* shall be taken but after three several summons, and so many defaults made; and in such case Distress shall issue by especial order from the County court.

I noted this partly to shew the difference of the Normans from the Saxons in the delay of execution of Justice by so much mean process, and partly to shew the difference between the Norman

Norman times, and these days, wherein mens Cattel lie open to the Distress of every oppressing or extorting Bailiff or unknown person, and no summons made at all, whereby many poor mens estates are either undone, or they must submit to the unjust demands of their adversary.

3. No manner of Goods of above four pence in value shall be bought unless in the presence of four witnesses of the Town. And the vendor shall satisfie out of his own estate, if the sale be not effectual, and in case the vendor have no warrant for such goods by him sold. *Ll. Gulielm. cap.* 43.

No living Cattel shall be sold, but only in Cities, and before three witnesses; nor shall any thing forbidden be sold without warranty. *Ll. Gulielm. cap.* 60.

4. No Fairs or Markets shall be holden, but only in Cities, Burroughs, walled Towns and Castles. *Ibid. c.* 61.

5. These Laws concerning sales and markets were ancient Saxon Laws, and tend all to the avoiding of cheating men of their Cattel by surreptitious sale of them made by such as had no right.

6. Goods found shall be published by the finder to the neighbourhood; and if any makes claim and proof of them to be his, he shall have them, giving security to bring them into the Court, in case any other shall within a year and a day make his claim thereto. *Ll. Gulielm. cap.* 7.

The children of persons intestate shall equally divide the heritage. *Ll. Gulielm. cap.* 36.

This is *in terminis* the Saxon Law, and therefore concerning it I shall refer to the same formerly recited; only I shall add hereto the Law of *Henry* the first, which may serve as an explanation of the former. *p.* 109.

Any Free-man may devise his chattels by will: and if he die intestate, his wife, children, parents, or next kin shall divide the same for his Souls good. The first branch whereof was ancient, and doubtless in continual use; *Ll. Hen.* 1.

but

but the iniquity of the Norman rude times was such, that the Lords under surmise of arrears or relief would seise all the personal estate after the Tenant's death, and so the right of last wills was swallowed up; but this restoreth the power of last wills into it's place, and in case the party died intestate, preserveth a kind of nature of descent, although they be more personal. Nor doth that last clause, of the Souls good, disanul the same, although the words may seem to carry away the benefit to some other hand. For the whole matter is left to the discretion of such as are next to the intestate.

CHAP. LII.

Of Laws that concern common interest of Lands.

THe Laws that concern Lands, and peculiarly belonging to the Normans, are such as concern principally the tenure of Lands; which if duly considered, although savoured somewhat of the King, yet little of the Conquerour: for generally it must be granted that Tenures long before and after this time, were as the services, ordered according to the will of the giver, in which as the King had the greatest share, and he the most publick person of all: so were his Donations ordered chiefly to advance the publick service; and in this regard the Tenure by Knight-service might more principally challenge the King's regard than the regard of all the great men besides. But this was not the sore, yea rather it was the beauty and strength of the Kingdom; and for which the King deserved an honourable name above most of his progenitors, who had not so much Land to dispose of as he had, and therefore could not advance that service in any proportion equal unto him. The sore that caused so many sighs, was the incumbrances raised upon this most Noble and free service, which through the evil of times by this means became the most burthensome and the only loathed and abhorred service of all the rest. I say through the evil of times; for it cannot lodge in my thoughts but in

the

the Norman times the incumbrances were nothing ſo great as of latter ages, and that much hath been imputed to the Laws of the Conquerour, which they never deſerved, as may appear in theſe particulars, which the Laws of *Henry* the firſt have preſerved in memory.

Tenant of the King, or other Lord dying, his heir ſhall pay no other relief than what by Law is due. 1. *Relief.*

That which by Law is due is ſet down in the Laws of *William* the Conquerour. *M. Paris. An.* 1100. & 1213.

The Relief of an Earl.
- 8. Horſes ſaddled and bridled.
- 4. Helmets.
- 4. Coats of Mail.
- 4. Shields.
- 4. Spears.
- 4. Swords.
- 4. Chaſers } bridled and ſaddled.
- 1. Palfray }

Ll. Gulielm. c. 12.

The Relief of a Baron.
- 4. Horſes with Saddles and bridles.
- 2. Helmets.
- 2. Coats of Mail.
- 2. Shields.
- 2. Spears.
- 2. Swords.
- 2. Chaſers } bridled and ſaddled.
- 1. Palfray }

Ibid. c. 23.

The Relief of a Vavaſor to his Lord.
- His beſt Horſe.
- His Helmet.
- His Coat of Mail.
- His Shield.
- His Spear.
- His Sword.
- Or if he had no Arms, then he was to pay.

} s. 100

Ibid. c. 24.

The relief of the Countrey-man is the beſt Beaſt that is in his poſſeſſion; and of him that farmeth his Lands a years rent. *Ll. Gulielm. cap.* 29.

Theſe are the Reliefs due by Law, and now ſettled in goods or arms, but afterwards turned into money; and it's likely that the ill cuſtoms in the former times did extort both money and arms, or ſuch ſums of Money as they pleaſed; and by the very words of the Law it ſeems they had brought it to an arbitrary power to take what they could get, and yet all againſt Law.

2. *Marriage.* The King's Tenant ſhall adviſe with the King in marriage of his Daughter, Siſter, Niece, or Kinſwoman; and his Widow in like manner.

The ſence hereof in ſhort is, that theſe might marry at their own will, without paying fine, or compoſition to the Lord, and yet muſt have the liking of the Lord ſo far as to declare whether the man intended were his enemy or not, and fit to perform Knight-ſervice. This Law was therefore grounded upon the preſent diſtreſs of affairs, wherein the nation was unſettled, and common right having eſtabliſhed a mutual truſt between Lord and Tenant found out this means to preſerve the ſame; for if the marriages of thoſe that are related to the Tenant in ſuch manner as may inherit part of all his Lands, or have joynture therein, ſhould be left altogether at the liberty of the Tenant or his Widow; it muſt needs follow that the mutual truſt between Lord and Tenant muſt fail, and the publick receive damage. And therefore if this cuſtom were of Norman birth, it was begotten upon a Saxon Law, and might the rather be owned by the Engliſh.

3. *Dower.* The Widow of the King's Tenant, having children, ſhall have her dower and portion ſo long as ſhe keeps unmarried.

The portion here is in the Latin word *maritagium*, which I take to be the marriage-portion given by the husband according to the Saxon cuſtom, when as the dower in Land was not in uſe, whereof is ſpoken formerly in that Chapter of dower. *p. 103.* And the Normans were neceſſitated to introduce this cuſtom of theirs with themſelves, partly becauſe it was a privilege which was their own by birth, and it could not be waved without an evident wrong done to the wives of theſe men

men who had ventured their lives in that ſervice; but principally becauſe it would not conſiſt with the work in hand to diſclaim that cuſtom which muſt needs be of infinite conſequence in the effecting of what was principally ſought after, *viz.* the union of the two peoples Normans and Saxons into one: I ſay it was principally ſought after by the Norman conquerour, if not led thereto by his own genius, yet neceſſitated thereto by force of reaſon of ſtate, as ſhall appear hereafter. And what could be imagined a more ready way to ſtay the effuſion of blood, and all other unhappy events of enmity, than by taking away enmity it ſelf? or a more ſpeedy and certain courſe for union, than to reduce the Men and Women of each people to mutual ſociety, and to ſeal up all by a laſting bond of Marriage? or greater encouragement for the comfortable proceedings therein, than the ſettling of the conſtant maintenance of the Wife, in caſe of ſurvivorſhip, by the Law of dower of the Lands and Tenements of the Husband? which was ſo full of contingencies, and uncertainties in the portion of goods that was by the Saxon Law appointed to the Wife in ſuch caſe. Nor was this all; for by marriage thus made to the Normans they had a great hold, not ſo much over the Engliſh, as in the Engliſh, and that not only during coverture, but by reaſon of this Title of Dower, the Women became Tenants, and under the Lord's wing, ſo as they durſt not willingly and illegally offend their Lord in their Widowhood, nor by Law nor reaſon match themſelves and their dowry to any other that was not firſt allowed by the Lord to be in friendſhip with him; and thus became the Tenants Widows to be at the liking of the Lord for their marriage: and the like hereto may be ſaid concerning the Husband in caſe of Tenant by the courteſie; and however by the Norman former practiſe it was much diſturbed; yet by *Henry* the firſt it was again reduced to it's former right, rather than original ariſing from his grant, as ſome hold, and proved advantageous for the ends aforeſaid. Now as touching their marriage-portion of goods, becauſe the Saxon Law had already endowed them thereof, they could not be induced to lay down their known ancient right, till they found the new Law of dower to ſettle, and ſo for ſome

Lindenbrog. Concil. Anham. c. 19. Ll. Edm.

Miror. fo. 10.

time both Laws were in force, until the more ancient Saxon Law had an honourable burial. Nevertheless for the present the Law abridged that right so far as to limit it to the Widow during Widowhood, according to the former Saxon Law. Upon consideration of all which it may well be conceived that the power of the Lords in consenting or dissenting to the marriages of their Tenants, Widows, and Wards, was not so much an usurpation upon the common right of the English subjects, as a custom rationally, and with great wisdom, as the course of affairs then stood, upholden and allowed amongst them, principally for the speedy settling of a peaceable government, and consolidating of two Nations into one, and wherein *England* was then so happy as to come to a conclusion in seven years, which cost their Ancestors nigh two hundred years experience with the Britans, besides a world of blood-shed that might have been spared, e're they could find out the right way to a desired peace by mutual marriages had between them.

cap. 4. Such Widow shall have the custody of the Lands of such
4. children, or otherwise such other person as by right ought to
Wardship. have the same.

This is the first news of Wardships, that passed abroad *cum privilegio* of a received Law, which together with the former declare the right custom of the Normans, and thereby the
M. Paris. *injustas consuetudines quibus Angliæ regnum opprimebatur*, viz. Arbitrary relief taken of the Tenant's estate, arbitrary marriages made of their persons, and arbitrary grants of guardianship of their Lands; for as yet oppression was not so high flown as to cast the government of the persons of their Wards out of the view of the Lords provisionary care, upon adventure of the next in Law, whether man or woman, wise or unwise, under pretence to train him up in military service fit for the Lord's own safety, and the Kingdoms lifeguard: but it was the proper ground of the Lord's own seisure and right of Wardship, he being looked upon by the eye of common reason as the only meet man that both could and would effect that work, so as might be most advantageous to the publick, which seemed to be chiefly con-

concerned herein; and upon the same general ground the survey of fools accompanied the former, albeit it was not in practice till *Henry* the first brought it in, as the *Mirror of Justice* saith (fo. 258.) yet it came upon an ancient foundation laid in the time of the Danes. For my own part I will not dispute the point whether this custom of Wardship was purely Norman, or whether it was derived from the Saxons anciently, who possibly might have some respect to Orphans, in such cases to train them up for the publick service in point of War, especially being possessors of a known right of relief, as well as *Alfred* the Saxon King did undertake the work for the training of some such particular persons in learning for the service of the publick, in time of peace and civil government; yet thus much appeareth that guardianship of Lands was a known custom enough to make and maintain a right, and that it by Law was a right belonging to some persons before others, and that this had been a custom before the former unjust customs crept into government of the Conquerour, and principally of his Son *Rufus*; and though it be questionable whether it settled first upon the Normans or the English, yet it's manifest that if one people had it, the other people now coming into union with that people, could not in reason except against that custom which the other people had taken up upon so honourable grounds as reason of State, which as the times then were, was evident and superlative; especially the customs being under the regulating of Law, and not of any arbitrary power, and can be no precedents of the relief, Marriage and Wardship that after ages usurped.

Ll. Canut. 37.

Asser. Menev.

Tenants in Knights-service shall hold their Lands, *&c.* acquitted of all Taxes, that they may be more able to provide Arms, and be more ready and fit for the King's service, and defence of the Kingdom.

cap. 5. 5. *Acquittall.*

This Law whether it be a renewing of a former custom, or an introduction of a new Law, it's clear it was upon an old ground: That Tenants by Knight-service must be ready for the service of their Lord, and defence of the Kingdom, whereof afterwards: But the Law is, that these men shall hold

their

their Lands of that Tenure acquitted of all Taxes, though legally impoſed upon the body of the Kingdom, which muſt be conceived to be for the publick benefit, *viz.* either for the preparation or maintenance of publick war; for in ſuch caſes it hath been in all times held unreaſonable that thoſe whoſe perſons are employed to ſerve in the Wars ſhould hold Lands doubly charged to the ſame ſervice, *viz.* to the defraying of their own private expences in the War, and maintenance of the publick charge of the ſame War beſides.

CHAP. LIII.

Of divers Laws made concerning the execution of Juſtice.

ALthough in proceedings in caſes of vindicative Juſtice delinquents might ſeem to be left rather to the fury than mercy of the Law; yet ſo long as men are under the Law, and not without the Law, it hath been always held a part of Juſtice to extend what moderation might poſſibly ſtand with the honour of the Law, and that otherwiſe an over rigid and fierce proſecution of the guilty is no leſs tyranny than the proſecution of the not guilty; and although violence was the proper vice of theſe times, yet this point of honour muſt be given to the Normans, that their Sword had eyes, and moved not altogether by rage, but by reaſon.

1. No ſentence ſhall paſs but upon averment of the complaint
Ll. Hen. 1. *c.* 5. by accuſer or witneſſes produced.

2. Fine and pledges ſhall be according to the quantity of the
Ll. Hen. 1. offence.
M. Paris. By theſe two Laws of *Henry* the firſt the ſubjects were delivered from three great oppeſſions: Firſt, in making them offenders without complaint or witneſs. Secondly, in impoſing immoderate fines. Laſtly, in urging extraordinary bail.

For-

Forfeiture of Felons Lands is reduced to a year and a day. 3. *Miror fo. 261.*

The Normans had reduced the Saxon Law in this case unto their own Last, which stretched their desire as far as the estate would bear; but this being so prejudicial to the immediate Lords, who were no offenders in this case, and so contrary to the Saxon Law, it was both done, and undone in a short space by the allowance of *Henry* the first.

Intent of criminal offences manifested by Act punished by fine or mulct. 4.

This by *Alfred*'s Law was punished by Talioes Law, but now by a Law of *Henry* the first reduced to mulcts. *Miror. fo. 254.*

Mainperners are not to be punished as principals, unless they be parties or privies to the failing of the principal. 5.

This Law of *Henry* the first repealed the former Law of *Canutus*, which must be acknowledged to be rigorous, although not altogether without reason. *Miror fo. 141.*

No person shall be imprisoned for committing of mortal crime unless first he be attainted by verdict of twelve men. 6. *Ll. Hen. 1. c. 5.*

By imprisonment is intended close imprisonment, or imprisonment without bail or mainprise; for otherwise it's apparent that as well by the Saxon as Norman Laws men were brought to Trial by restraint.

Appeals of murther restrained within the fourth degree. 7.

Before this Law Appeals were brought by any of the blood or kin of the party slain: but now by *Henry* the first restrained. The ground seems to be, for that affection that runs with the blood, grows so cold beyond the fourth degree that the death of the party is of so small account, as can it scarcely be reputed a loss of such consequence to the party, as to expose the life or price of the life of the manslayer unto the claim of such an one; and thus the Saxon Law that gave the satisfaction in such case to the whole kinred, became limited to the fourth degree, as I conceive from the Ecclesiastical constitution concerning marriage. *Miror. cap. 2. Sec. 7.*

Two

Two things more concerning juridical proceedings may be noted, the one concerning ſpeedy courſe of Juſtice, wherein they may ſeem to juſtifie the Saxon way, but could never attain to their pace, in regard they yielded ſo much time to Summons, Eſſoyns, *&c.* The other concerns election of Judges by the parties; for this we find in the Laws of *Henry* the firſt.

CHAP. LIV.

Of the Militia during the Normans time.

THe power of Militia is either the legiſlative or executory power: the legiſlative power without contradiction reſted in the grand Council of the Kingdom, to whom it belonged to eſtabliſh Laws for the government of the Kingdom in time of peace. And this will appear in the preparation for War, the levying of War, and managing thereof after it's levied: for the preparation, it conſiſteth in levying men and munition, or of money; In all which queſtionleſs will be a difference between raiſing of War by a King to revenge a perſonal injury done to the King's own perſon, and a War raiſed by the whole Kingdom, or repreſentative body thereof, which is commonly done in defence of publick intereſt, and ſeldom in any offenſive way, unleſs in recovery of a right poſſeſſion, either formerly loſt, or as yet not fully ſettled. Now although it be true, that ſeldom do injuries reflect upon the King's perſon alone, but that the Kingdom will be concerned therein to endeavour a remedy; yet becauſe it may fall out otherwiſe, Kings having been occaſioned to levy War of their own accord, but in ſuch caſe could neither compel the perſons of his ſubjects or their eſtates to be contributary. And of this nature I take the War levied by *Harold* againſt the Conquerour to be, wherein the greateſt part of the Kingdom was never engaged, nor therefore did it feel the dint of the Conquerour's Sword at all; and in this caſe the Militia muſt be allowed to ſuch as bear the purſe: nor

nor can it be concluded to be the Militia of the Kingdom, nor any part thereof, although it may connive thereat. But to set this consideration aside, as not co-incident at all with the Norman engagements after they were crowned, and to take all the subsequent Wars to be meerly defensive of the right of the Crown, as in sober construction they will appear to be: as touching the levying of money, it's evident that it lay only in the power of the grand Council of the Kingdom; for otherwise the Laws were settled that no Tax should be made or taken, but such as were due in the Confessor's time, as formerly hath been shewed. Secondly, for the preparing of men and munition, it was done either by Tenure or by special Law; as touching Tenure, it was provided by way of contract, that those that held by Knight's-service should be ready with their Arms to assist the King for the defence of the Realm: So as they were not bound by their Tenure to aid him in any other cases. Others were also by especial Law of the Land bound to be ready for their service in that kind: For all the inhabitants of this Kingdom held their estates under a general service, which by common right they are bound to perform, *viz.* in time of danger to joyn in defence of their Countrey: This is the common fealty or allegiance which all men owe; and which if neglected or refused, renders the party guilty of treason against his Countrey, and his estate under the penalty of forfeiture, according to the old Saxon Law revived and declared by *Henry* the first. Thus the Law made preparation for the War, both of Men and Arms. Castles and Forts were likewise either first made by the order of the grand Council, or otherwise allowed by them for the defence of the Commons, and the Kingdom; so was the Law of *William* the first. The levying and managing of the War must not be denyed *de jure* to belong to the representative body, so far as may consist with the directory part, for that it is a main part of the government of the Kingdom in times of War: And therefore *Henry* the first, amongst his Laws made in the ordinary course of Law making, provideth for the ordering of men in the army in the field, and established a Law, that such as forsook their colours or associates in the field, during the

b. 136.

Ll. Gulielm. cap. 57.

Ll. Gulielm. cap. 59.

Ll. Hen. 1. c. 13

Ll. Gulielm. cap. 61.

battel, should be punished with death, and forfeiture of his whole estate. Nor yet can it be denyed but that *de facto* Kings of their own accord, and by secret Council did direct therein; either in the vacancy of Parliament, which was the general case of the first times of the Norman Conquerour, and the whole Reign of *William Rufus*; or by connivance of the grand Council, while they saw nothing done but what was well done. Nor can it be rationally said that Kings by such advice as they have (in the recess of the grand Council) levying War in defence of the publick, according to rules, do otherwise than their duty; or if the grand Council look on, see nothing misgoverned, and say nothing, that they do other than is meet; For it must be remembred, that Kings in their first original were rather Officers for War than peace; and so are holden by all Antiquity, and as Generals in War were called *Reges* or *Imperatores* by the Grecians, Romans, and Germans: and at such times as War was concluded, at the general meeting of the people they chose their *Dux* or *Rex*, call him which you please; and he being chosen, all bound themselves to be at his command, and to defend his person: so as while a King keepeth his within his place, in time of danger it's his duty first to stir himself, and stir up the rest; to lead them and order them, as may be most for the publick defence, and to govern the Army by such Laws as are or shall be established by order of the publick meeting, and in case of sudden exigencies to use his own wits; and in all this is the common liberty no whit infringed, in regard that all is for the publick defence, to which the Knights are bound by their Tenures, and all others by the Law. And this was this Kingdoms case in the Normans time, that both Leaders and Souldiers, whether by election of the people, or prescription, yet all served for the defence of the Kingdom. Nor were they compellable to any other service inconsistent therewith, nor to stand to any judgement in such cases differing from, or contrary to that of the Parliament it self.

LL.Hen.1.c.13

CHAP.

CHAP. LV.

That the entry of the Normans into this Iſland could not be by conqueſt.

THat in point of fact the entry of the Normans into *England* was not by Conqueſt, will ſufficiently appear from what hath been already noted. I ſhall make one ſtep further, and ſhew, that as affairs then ſtood with the Conquerour, it was impoſſible for him to merit that name againſt the ſtream of providence, that had pre-engaged him to three ſorts of men, *viz.* the Normans, the Clergy, and the Commons of *England*. p. 115.

It muſt be taken for a ground that Duke *William* muſt give all fair correſpondency to the Normans, conſidering they are members of his own body, and the arm of his ſtrength, without which he could do nothing. And it's not leſs certain, that however the Sea divided the two Countries, yet long before the arrival of the Army, the Normans and Saxons were ſo well acquainted by the latter acceſs of the Danes, that partly by marriage and other intereſts the Normans made ſo great a party in *England*, as that party merited no leſs from the Duke in his entrance, than thoſe he brought with him; and therefore both they and their Allies in all reaſon muſt expect ſuch reward of their faithfulneſs to him, as the other had; nor could the Duke deny the ſame, unleſs he had diſclaimed his own intereſts, whereof he had none to ſpare. Secondly, their merit from the Duke was accompanied with no leſs mutual relation to his Army, being of the ſame blood with themſelves, and of ancient acquaintance, and as impoſſible for the Duke to keep them from conſociation with the mixed people, as to abſtract the mixed people each from other; one or both of which muſt be done, and the Conquerours muſt be kept from incorporating with the conquered, or elſe the Law of Conqueſt cannot hold. Thirdly, if theſe two had failed, yet *M. Weſt. An.* 1072. *Ll. Gulielm. c.* 55.

had the Duke by his manner of rewarding his Army disabled himself from holding, however he might seem to have by conquest. This was his gift of Mannors, Lands, and Franchises unto his Souldiers, compleated with their ancient rights, and priviledges in free service; otherwise it had been little better than a Trap to bring his own men into bondage, who lately were free Souldiers under no better than a Duke of their own election; and their government in their own Countrey, however big, yet had not brought forth a soveraignty into the World; their Duke no compleat King, nor themselves so mean as vassals; and it was equally difficult for him to get up higher, as for them to stoop lower: And however, it was dangerous now for the Duke to try masteries; unless he meant to hazard all, and to change the substance for the shadow. Lastly, to lay them all aside, and to take the Normans as in themselves considered, a people under such Laws and Customs as were the same with the Saxons, and originally in them, and from them derived into *Normandy* by *Rollo* or some other; or take them as a people willing to lay aside their own Law, as some Writers affirm, and more willing to take up the Danish customs, which were also very nigh a kin to theirs, and in part settled by the Danes, in that part of the Kingdom where themselves most resided. It must be concluded, that a government by Law was intended, and such a Law that was no way cross to the fundamental Laws of this Kingdom, but concurring therewith; In every of which regards the future generations may justly claim their immunities as successors and heirs unto the Normans, albeit no Saxon could have enjoyed or derived the same to posterity.

A second sort of men that made the King uncapable to hold by conquest was the Clergy, a considerable part of the Kingdom in those days, when as in every Nation they grew checkmate; and in this Kingdom had well nigh the one half of the Knights fees, and thereby a principal part of the strength of the Kingdom, besides the consciences of them all; and for a reserve they had the Pope in the rear, whose power in every Kingdom was little inferiour to that of the King's own, and therefore sufficient to stop an absolute Conquest, unless it were

first

first conquered. But the King came in upon great disadvantages in both these regards: For whereas his pretence upon his entry was to advance Justice principally toward the Clergy, who formerly were wronged by *Harold*, or voiced so to be, this bound him from injustice and oppression; and furthermore the Pope had him in a double bond; one as Prince of the English Clergy; the other as Judge of the Title of the Crown by the King's own election; and that by sentence; for the King had merited of him, if not to hold the Crown it self by fealty to the Roman See, yet by such services, as that the Tripple Crown should be no loser. The King therefore must resolve to have no more to do with the Church than will stand with the Pope's liking, unless he meaned to adventure himself and all he had into the danger of the great curse, of which the King would seem more sensible than perhaps he was. Nor were those times of the Church so moderate, as to bring forth Church-men that would catch the good will of the Laity by condescention, or Popes of that height of perfection as to part with one tittle of their great Titles, much less ought of that pitch of power which they had griped, though it would save the World from ruine. In all which regards the Norman Duke was too far inferiour to attain by conquest any thing in this Kingdom, wherein the Pope or Clergy claimed ought to have or do.

A third sort of people avoided the dint of Conquest either by timely siding with the Norman, or by constant resisting of him, or by neutrality. Of the first sort were many, both Lords and others, that by affinity and consanguinity were become English men to the Norman use; others were purchased thereunto by the Clergy, that were zealous for the Pope's honour, that was engaged in the work. Of those likewise that were resolute in the defence of the liberty of their Country there were not a few that purchased their liberty, who otherwise might under pretence of treachery have forfeited the same to the rapacious humour of the Conquerour; and this was not done only by valour, for *Normandy* stood in a tottering condition with their Duke; partly drawn away by the French, that feared the Duke would be too strong for them; and partly declining

Hovedon. lib. 6.

Ingulfus 512.

clining their own further aid, leſt their Duke ſhould be too great for the Dutchy. It was therefore wiſdom in the Conquerour to ſettle the Engliſh affairs in the faireſt way to gain them for himſelf, who had been ſo brave againſt him. But the greateſt number, eſpecially of the Commons, looked on while the game was playing, as contented with the caſt of the Dice, whatever it ſhould be. Theſe were afterwards by the King looked upon, not as enemies (as the preſident of *Edwin* of *Sharneburn* witneſſeth ſufficiently) but upon ſuch as either were or by fair carriage would be made his friends; and therefore he concluded them under a Law of aſſurance, that they that had been ſo peaceable, ſhould have, and enjoy their Lands as entirely and peaceably as they had formerly done before his entry. To conclude therefore this point: if theſe three parties of the Engliſh Normans, the Engliſh Clergy, the ſtout Engliſh, and the peaceable Engliſh be ſet aſide from the Title of Conqueſt, it will be probable that not one tenth part of the Kingdom were ever under other change than of the Governour's own perſon.

Gloſſ. 217.

CHAP. LVI.

A brief ſurvey of the ſence of Writers concerning the point of conqueſt.

THe clamours in ſtory that the Conquerour altred and made Laws at pleaſure, brought in new cuſtoms, moleſted the perſons and eſtates of the people with depopulations, extortions, and oppreſſions, and others of that nature, have made latter times to conclude his government to be (as of a Conquerour) meerly arbitrary, and that he did what he liſt: how different this concluſion is from the intent of thoſe Writers I know not; but if the King's Title and Government was as a Conquerour, then was his will the only Law, and can adminiſter no cauſe of complaint of wrong and oppreſſion; and therefore if theſe be taken in nature of complaints, they declare plainly

plainly that there was a Law in Title, or else there could have been no transgression or cause to complain. But if the Reader shall apprehend these passages in Writers to be no other than sober relations, then were it not amiss to consider from what sort of men these complaints or relations do proceed, *viz.* from Writers that have been cloystered men, little seen in affairs of State more than by common report and rumour; prejudiced by the King's displeasure against their Cloysters, and therefore apprehensive of matters in the saddest sence, and many times far beyond the truth, and might as well be supposed to mis-relate, as to mistake. For if we shall touch upon particulars, I think 1.
no man will deny but the King allowed property indifferently, as well to Normans as English, if the premisses be rightly considered: and therefore though somewhat be true of the plundering of houses of Religion, persecuting of the English Nobility, deposing of Bishops and Abbots, whereof they speak; yet all might be deservedly done in a legal way, and in execution of Justice, whereof Histories are not altogether silent; Nevertheless, if in the prosecution the King did shew a kind of rage, and some rashness, it might be imputed to the common infirmity of great men; for as oppression upon those that are inferiour, makes them mad, so doth treachery against them that are superiour make them little other; especially if they be overtaken with a fit of passion in the instant, or their minds wraped into a whirlpool of affairs.

But the change of Laws makes the greater noise; wherein 2.
what change they suffered, may appear from the premisses, if Writers have dealt uprightly; Otherwise general imputations without particular instances will never sway opinion contrary to the current of the Laws that are published; especially seeing we have observed the errour of the best Historian of those times, in calling those things new which were anciently used in *England*, before *Normandy* was in a condition of a state. Yet if this should be granted, and that there were such change of Laws as is pretended, it makes nothing to the point of conquest, so long as the new Laws are made by advice of common Council, and for the common good; and so long as they

are

are eſtabliſhed to be rules for government. I remember it's affirmed by ſome of thoſe ancient Writers, that the Duke or King would have brought in the Cuſtoms of *Norway*, but the earneſt mediation of the Engliſh prevailed againſt it: and it evinceth two things to my opinion: Firſt, that there was queſtion made what Law ſhould be eſtabliſhed. Secondly, that notwithſtanding the intereſt that the Normans had in the Kingdom, they could not prevail to bring in the whole body of their Law, or of the Cuſtoms of *Norway*, which were not only the *prima materia* of their Law, but alſo in kind had a ſettling at that very time in thoſe places of this Kingdom where the Danes had their principal ſeat: and therefore not altogether ſtrange to the Saxons themſelves. The ſum of which will be this, that upon debate a Law muſt be ſettled, and that not the Law of the Conquerour's own will, nor the Law that ſuits with his deſire; but the ancient Law of the Kingdom: and therefore if at any time the unquietneſs of ſome of the Engliſh brought the King to ſome thoughts of arbitrary rule, and to ſhake off the clog of the Saxon Law; it was long e're it ſtirred, and ſprang up too late to raiſe the Title of Conqueſt, and withered too ſoon to ſettle it.

As touching the change of Cuſtoms (for that alſo is imputed to the Conquerour) it cannot be denyed but ſome alteration might be in matters of ſmaller conſideration; yet are the Writers not without miſtake in the particular inſtances: For whereas they tell us that the Conquerour took away the cuſtom of Gavel-kind, and brought the cuſtom of deſcent to the eldeſt Son: and that *Kent* ſaved their liberties and continued this cuſtom of Gavel-kind: I ſhall not contend about the liberties of *Kent*, but muſt till I ſee better reaſon hold the opinion of the change of inheritance to be a meer conceit: For (beſides what hath been already ſaid concerning that cuſtom of Gavel-kind) if we believe *Glanvil*, the difference was between Lands holden by Knight's-ſervice, and in ſocage: the firſt of which in his time by ancient cuſtom always deſcended to the eldeſt: and thoſe Lands that were holden in Socage (if not partible by cuſtom, in which caſe they went equally to all the Sons) went by cuſtom in ſome places to the

Lib. 7. cap. 3.

the eldeſt, in other places to the youngeſt; ſo as the rule of inheritance in the Norman times was cuſtom, as well as in former times. And furthermore, if the cuſtom of Gavel-kind had been the general cuſtom of this Nation, the King by his change had contradicted his own Prerogative, and granted as great a liberty to his ſubjects as could have been invented: For had the cuſtom of Gavel-kind happened upon the Lands in Knight-ſervice, it had brought all the Sons under the Law of Wardſhip, and had made a ready way to enthrall all men of worth, and undoe all husbandry; the firſt whereof had been as advantageous to the King's private intereſt, as both deſtructive to the publick.

3. Nor is it clear from any Author of credit, that the Normans changed the Tenures of Lands; albeit that it cannot be denyed but ſuch Lands as he had by forfeiture, or otherwiſe, were in his own power to diſpoſe upon what Tenure he pleaſed; for as well before the Normans time as long after, Tenures were like as the ſervices were, all at the will of the donor; and were of as many individuals almoſt as the minds of the owners; ſome being of more general regard and publick uſe, are recorded amongſt the grounds of Engliſh Laws; none of which appear to me to be of Norman original, although they received their names according to that dialect. *Littlet.*

4. The next thing objected is the change of Language, which thing ſome Writers tell us the King endeavoured; or which is worſe, to be ſo abſolute, as to be abſolute Tyrant, and to publiſh Laws in a foreign Language, that the people through ignorance might the rather tranſgreſs, and thereby forfeit their eſtates. This (if true) ſo far differed from the nature of a Conquerour, as rather proveth that he was put to his ſhifts: Nevertheleſs the thing taſteth ſo much of ſpleen, as it might occaſion diſtruſt of other relations concerning this ſubject: For beſides that it is nonſence for a Conquerour to entitle himſelf by a cheat, where he hath an elder Title, by conqueſt; I ſhall in full anſwer to that calumny inſert a paſſage of an Hiſtorian that was in the continual view of publick affairs in thoſe times, who ſpeaking of the Conquerour ſaith, That he commended the Confeſſor's Laws to his Juſtices in the ſame

Ingulfus. Language wherein they were wonted formerly to be written, leſt through ignorance the people might raſhly offend. And *M. Paris. fragm. Gulielm.* another Authour ſaith, that the King had a deſire to learn the Engliſh Tongue, that he might the better know their Law, and judge according thereto. It's probable nevertheleſs, that the Laws were in the Norman Tongue; and it's no leſs likely that the pleadings, in real Actions eſpecially, were alſo in the ſame Language: elſe muſt the Normans be put to ſchool to learn Engliſh, upon peril of loſs of their Eſtates: but that either the written Laws were wholly concluded into the Norman Tongue, or that the publick pleading of cauſes by word of mouth in all Actions where the iſſue was left to the Country, were in any other Language than Engliſh, no adviſed Reader will conceive: ſeeing it had been a madneſs for an Engliſh Jury to paſs their verdict in any caſe wherein it's likely many of them underſtood ſcarce a ſyllable of the Norman Language, much leſs ought of the matter upon which their verdict ſhould be grounded. Add hereunto, that it's not likely but the Conquerour inhibited the uſe of the Engliſh Language in all matters of publick Record, in as much as the Charters made by him to corporate Towns and Franchiſes were ſometimes in the Saxon, more generally in the Latin, but ſeldom or never in the Norman dialect; and that pleadings and indictments were entred in like manner in the Latin Tongue (as formerly by an old cuſtom brought in by the Clergy was uſed) for the Clergy, who had gotten the Key of knowledge and Law into their own cuſtody, laid it up in that Language whereof the Commons had little knowledge, that they might thereby be enforced to depend upon theſe men for Juſtice, as well as for piety. The Normans therefore either found it too hard to alter the former cuſtom in ſuch caſes; or elſe thought it the wiſeſt way to chuſe the Latin as a third Language indifferent as well to the Normans as Saxons, and beſt underſtood of any foreign Tongue beſides: and yet endeavoured to bring both peoples into one Language, as they were intended to be one people; and to preſs the uſe of the Norman Tongue in publick affairs, ſo far as might conſiſt with good government and Juſtice, leaving time and occaſion to work the iſſue, which doubtleſs was much, and had been more,

more, had the Norman race continued in the Throne. But falling out otherwise, the English blood prevailed in the head, and the Language continued possession, mixed only with some Norman words, as the people also were a mixed people. So as the Language was not changed, though it was altered.

Lastly, it's affirmed that the Normans did impose a new custom called Coverfeu; and it's thought by some to be a meer vassalage, that every man at the noise of the Bell every night must put out both fire and Candle; and yet is a matter of so small concernment, that (of being in it's own nature convenient) *Scotland* received it without such coercion: and can be reputed for no other than a seasonable advice, which any Corporation in time of danger might order within their own Precinct, without transgressing the liberty of the Subjects. Of less consequence is that change, which is alledged was brought in by the Normans in the sealing of Deeds of conveyance, by setting a print upon Wax annexed to the Deed, which formerly was wont to be by setting a print upon the blank at the end of the Deed; and yet it's looked upon by some as a Trophy of Conquest or absolute government: concerning which, I will not dispute whether the Normans first brought in this course, but shall rest in this, that the King being about to compleat the unity of the Laws in the superstructure as well as in the fundamentals, if herein and in some other particulars the English submitted to the Normans, they likewise stooped to the English Law in other things; and therefore such concurrences ought not to be imputed unto a conquering power, but unto moderation amongst a company of wise men. 5.

Thus having glanced at the changes of Property, Laws, Tenures, Language, and some customs, we come to that which is the main occasion of all these complaints, I mean unlawful Taxes, afforstinges, and other such oppressions upon the estates of the people: concerning which I purpose not to contend, for much thereof is like to be true: the Norman Kings (especially the two *Williams*) being under continual occasion of expence, many Wars, more provocations, which kept them ever in Action and that wrought their spirits into an immoderate heat, little inferiour unto rage; and so they might soon out-reach their

bounds, and sit heavy on the people; and in such occasions no man escaped, Norman nor English, Clergy-man nor Lay-man; nor did the Kings themselves come off such gainers, but that they might sometimes put up their gettings into their own eyes, and see never a whit the worse. And yet to do them right, they were not always of such sad influence, but had their *lucida intervalla*; especially he that had the least cause, I mean the Conquerour, who certainly was a man of a serious regard, and did not only remit sometimes his rigour in exacting where he ought not, but also forbare to require that which he had some colour to demand: for whereas the Dane-guelt was left unto him in the nature of an annuity, he was contented to turn it into a sum in gross, and to demand it only *Cum ab exteris gentibus bella vel opiniones bellorum insurgebant*; and it was then done *consultis magnatibus*. *Hoveden.* These things thus considered, might have mollified somewhat the Pens of angry Writers; and where they fail, may be caution to Readers to consider occasions and dispositions of Princes; and so long as Laws hold in Title, to construe the irregularities of Princes to be but as steps out of the path to avoid a little dirt, that a man may get home the more cleanly; and therefore rightly can derive no other Title of absolute Soveraignty to their successors than to hold by infirmity. And thus the Government under the Normans at the worst was but like that of childhood, following sudden and present desires, not wise enough to plot for absolute Monarchy, nor to keep off a polity, which still rooted underneath, though the fruit, while it was now green, was harsh and unpleasant.

I shall conclude this Norman discourse with this advertisement, that notwithstanding the words *Conquerour* and *Conquest* have often fall'n from my Pen, and hereafter may do the like, yet can I see no reason why divers succeeding Kings coming to the Crown by argument of the Sword, and not by right of descent, may not deserve the Laurel as well as the first Norman King; only because fame hath fancied him that Title, under a kind of prescription, I do the like.

CHAP.

CHAP. LVII.

Of the Government during the Reigns of Steven, Henry *the* 2. Richard *the* 1. *and* John. *And first of their Titles to the Crown, and dispositions in Government.*

I Have cut out this portion of one hundred twenty and five years (containing the Reigns of these Kings) apart from their Successors, in regard of their Titles; all of them being under one general climate, and breathing one air of election, and compact between them and the people. Now was the issue male of the stock of *Normandy* quite wasted; I mean in relation to succession by inheritance: for although it was the lot of *Henry* the first to have many children, yet it was not his happiness to have many lineal; nor to hold what he had; nor of them all was there left above one that might pretend to the Crown, and it a daughter, who was the great Grandmother to all the succeeding Kings till this day. Only King *Steven* like an unruly Ghost coming in upon the Stage troubled the play during his time. This Daughter of *Henry* the first was married to the Emperour *Henry* the fourth, and surviving him was in her Father's life time acknowledged to be his heir; (the Sea having formerly swallowed up the remainder of his hope) unto her the Lords sware fealty as to the next successor in the Throne after the decease of her Father, being led thereto by the instigation of her Father, whose conscience told him that the Title to the Crown by inheritance was weakned by his own precedent, himself comming to the same by election of the people, contrary to the Title of his Brother *Robert*. Nevertheless this was not the first time that the English Crown refused to be worn by practice; for *Henry* the first being dead, *Steven* the younger Son to a younger sister of *Henry* the first put up head: who being of the Royal stem, a Man, and a brave Souldier, by the ancient

Steven.

f. 19.
H. 35.
R. 10.
J. 17.
81 years

ent

ent course of the Saxons, had Title enough to be thought upon in a doubtful succession. Besides he was a rich man, and had enough to raise up his thoughts to high undertakings, and a Brother, a Bishop and Legate to the Pope here in *England*, one who was of a high spirit, and vast power; advantages enough to have quickned a much duller spirit than his was, who was the Son of a Daughter to *William* the Conquerour; and to make him yet more bold, he had the upper ground of the heir, who was a woman, disadvantaged by a whispering of wilfulness, and customary government like an Empress: which was too high a sail for an English bottom, wherein so precious a treasure as the Subjects liberties was to be shipped. Thus provided, *Steven* stepped up to the English Throne, and with protestations of good government entred and made up the match both for Crown and Scepter, the people waving the Title both of Empress and heir; the pretensions of the E. of *Bloys* elder Brother to *Steven* gave way to the common Law and liberties of the Subject to fasten, root and gather recompence after the violence of the Norman blasts was out of breath; thus making way over hedge and ditch of all Oaths, till the King was quietly settled in the Throne.

Quietly, said I? that I must retract; for he never had quiet during his life, though generally he was victorious, and did as much as a King could do that had the passions of a man and Souldier, to give the Subjects content. The true cause whereof was an errour in the tying of the knot, wherein he neither became theirs, nor they his: For the fealty that was sworn to him was but conditional and *eousque:* and yet the King's promises were absolute, and better observed than the peoples were, possibly because his engagements were more. For besides his protestations, the King pledged his Brother the Legate to the people, and mortgaged himself to his Brother: and to boot gave both to the Clergy and Barons liberty to build and hold Castles for their private security: the issue whereof may mind, that too much countersecurity from the King to the people is like so many Covenants in Marriage, that make room for jealousie, and are but seeds of an unquiet life: and thus it befel this King's

King's Reign. His first troubles are brought in by Historians, as if they dropped from Heaven, yet probably came immediately from without, *viz.* from beyond Sea where the Empress was: for as the King's engagements were in their first heat on the one side, so was also the Empresses choler on the other side, and therefore might make the first assault: and the King's first success therein falling out prosperously for him, conceited him that he was strong enough to encounter his own Covenant, although in truth he invaded but the skirts thereof: I mean that collateral security of Castles: for by experience he now feels that they are blocks in his way, he must therefore have them into his own power. But the Clergy are loth to forego their pawn till they had their full bargain, (for now they were working hard for investures of the Mitred Clergy under the patronage of a Legate that had the King in bonds) acted their parts so well as they engaged the Nobility for their liberty of Castles, in which atchievement the King was taken prisoner. The Empress betakes her self to the Clergy, and by the Legat's means procures a kind of election to be Queen: but she sick of the Womans humour, and thinking too much of the Empress, and too little of the Queen, and forgetting that the English Crown would not fit an Empress, unless she could fit her head first to it, choaked her own Title by prerogative, and so let the Crown slip through her own hands, which fell upon the head of *Steven* again, who maintained it by his Sword, after by composition, and then died a King: and thus like a vapour mounted up by the Clergy, tossed by Tempests for a time, and at length falling, gave way to the Crown to have it's free course to the Empresses Son by *Geoffery Plantagenet.*

This was *Henry* the second, the most accomplished for wisdom, courage and power, of all his predecessors, and one that wanted nothing but purpose to have undone what the foregoing Princes had done, in the settling of the liberties of the people: for the subjects were tired with the unquiet former times, and the Clergy in distraction through the Schism in the Popedom between *Victor* the fourth, and *Alexander* the third, *Henry 2d.*

third, and very unfitting all were to diſpute the point of prerogative with ſo mighty a Prince. And it was the wiſdom of God to order his affairs ſo, as that he was not very fit to diſpute with the people in that caſe: for his Title to the Crown was not very excellent, being neither heir to the laſt King that reigned, nor to the laſt of that Title, I mean to *Henry* the firſt: but Son only to the Empreſs, who was now alive, and by deſcent was to be preferred before all other. His Title therefore is clearly by compact and agreement made between the Lords, King *Steven*, and himſelf, all being then ready to try the right by the Sword to that to which none of them had any right at all at that time, but by the favour of the people. Nor did the King ever after diſpute the ſtrength of this Title, although before he died, his mothers death conveyed over to him what right of deſcent ſoever was conſiſtent with the Law of the Crown, nor did occaſion favour him thereto: for as it's never ſeen that any man is honoured by God with many advantages without proportionable employment for the ſame, ſo it befel with this King: His great Territories in *France* brought jealouſie in the rear: and it ſtrife and contention with *France*, enough to turn his thoughts from waxing wanton againſt his own people: and therefore his wiſdom taught him to prefer peace at home to the chief of his prerogative: to become ſomewhat popular, and yet to loſe nothing of a King thereby: his way was to keep the Church-men down, that had during his predeceſſors time grown, whether more obſtinate againſt the King, or inſolent over the people, is hard to judge; and in this he had the people to friend; and might have prevailed much more than he did, but that the people feared the threats of *Rome* more than he; and himſelf (if not guilty of *Becket*'s death) more the conceit of fame than there was cauſe: theſe concurring with unnatural troubles from moſt unthankful Sons made that ſpirit of his to fail that formerly knew no peer, as it's often ſeen that the moſt generous ſpirits are ſooner quelled with ſhame and grief, than with fear of any danger whatſoever. Towards his Lay-Subjects he was more regardant for the ſettling of Laws, and executing of Juſtice, ſo as ſome have thought

thought him the first womb of our English Laws; others more truly the first *Mecœnas* since the Conquest that brought on the spring-time of a settled Common-weal, and thereof left this fair testimony by his putting forth that Primrose of English Laws, under the name of *Glanvil*, letting all men know that thenceforth *England* would no more vale it self in an unknown Law, but explain it self unto the World to be a regular government, such was the King's Idea; yet was he touched with so much of the common infirmity of Kings as shewed him to be a man: especially in his old age, being loaden with military affairs, wherein he had been long exercised, he had contracted some shifting courses of a Souldier in gathering money, and Souldiers somewhat out of the road way of an English King, and led an ill example to future Ages: nor had he other salve for this wound, but that it was for the honour of Christian faith, and for the sake of *Jernsalem.* *Hoveden.* 348.

Next comes in *Richard* the first, *Henry* the second's son both in birth and courage: yet was his behaviour to his father such that his meritorious holy War could never wipe it out of the Calendar of story. His entrance was upon an election made in his Father's life time, and the same confirmed by receiving of homage from the Peers. The sad troubles that this election amongst other things occasioned to his Father in his old age show plainly that *Richard* trusted not to the Title of inheritance: nor the French King (that took his part) unto the English custom, for the possession of the Crown: but all must be done in the life of the Father, that must secure the government to the Son when the Father is dead: and thus is he entred upon the Throne, not as heir, but as successor to his Father, yea rather as survivor, taking possession of what was by special compact conveyed to him by the means of his Father in his life-time, though sore against his will, if Writers speak true. As his entrance was, it promised a better government than followed; for though it was for the most part hidden in the womb, as himself did subsist in another World, yet by a secret providence he was given over to the election of ill depu- *Richard the first.* *M. Paris.*

ties; and therefore he was not welbeloved, however dear he was to this Nation. A third part of his government was ſpent in a calm with Pope, Clergy, Commons, and all Nations that were not Infidels, upon conſcience it ſeems that he ought not to be troubled who adventured his perſon ſo bravely in the holy War. But above all he was the Clergies darling, not only for his adventure in the holy Land, but now much more in his return by his impriſonment in *Germany*; and therefore they ſtuck cloſe to him in his abſence, not only in maintenance of his right to the Crown (whereto ſome made claim, and his own Brother *John* did more) but emptied themſelves to the utmoſt for his delivery, which they effected to the envy of the French, and ſuch as longed for his downfal here in *England*. The King comes like the Sun-riſing, ſcattering his Brother's deſigns by his very view; then returns his thoughts for *France*, where he ſpent the reſt of a reſtleſs life: and as his entry upon the Throne was unnatural (for he made his way upon his Father's Herſe) ſo was his Reign full of troubles, and his end not unlike; for it was violent, and by the hand of his own ſubject; and ſo ended his Reign that ſcarce had any beginning.

John. Next comes in King *John* to act his part according to his entry hand over head; whether called by a people ſcared with the noiſe of ſucceſſion by inheritance, or ſuch as thought it not convenient nor ſafe in a ſtirring time to have a child to be their King; or Laſtly, led by an intereſt that *John* the youngeſt Son of *Henry* the ſecond had by woful experience obtained amongſt the Lords, or ſome or all concurring; its clear they croſſed the way of inheritance, waved *Arthur's* Title who was heir to *Richard* the firſt, and by him alſo appointed to ſucceed, being then but a child; and they choſe *John*, a man of War, trained up in the government of *Ireland*, which made way for his active ſpirit; and well ſeen in the government of *England*, which might have made him wiſe: and under theſe conceits were willing to forget his oppreſſion in *Ireland*, his treachery againſt his Lord and King in *England*, ſet the Crown upon his head, and in concluſion acted the Tragedy of *Abimelech*

lech in Engliſh, wherein the Cedar was rooted up, and the Bramble trodden down.

The general temper of his government ſheweth that though the King muſt be thought ſober, yet the man was mad; for he hawked at all manner of game, *France*, *Scotland*, *England*, Laity, Clergy, ſpared not the Pope himſelf, ſcorned to ſtoop to occaſion; all which he did by the ſtrength of the name of a King: till at length being well cuſt and plumed, he was fain to yoke his lawleſs will under the grand Charter, depoſe his Crown at the Pope's foot, and inſtead of a King became little better than a chief Lord in *England*. Thus although *Richard* the Firſt forgot this man's diſloyalty, yet God remembred it: for the King having gotten the Pope upon the hip, and put him to his laſt ſhift to ſtir up the French to ſet his curſe on work, was by a hidden providence conquered in the middeſt of a Royal Army, without view of enemy, or other weapon than a meer noiſe; his Nobility (either ſuſpecting all would be gone to *Rome*, or expecting that the King would not deny them their own, ſeeing he had been ſo profuſe in giving away that which was not his) demand that their liberties might be confirmed; but he being loath to be mated by his Nobles, though he was overmatched by the Pope, arms himſelf with the Pope's curſe, and the Lords themſelves with the French mens power: thus the Tables are turned, and the French playing an after-game to gain to themſelves the Crown of *England*; after they ſaw the death of a Warlike King, diſcovered their deſign before it was ripe; and in the concluſion were beaten out of the Kingdom by a child.

It's not worth inquiry what the King allowed or diſallowed; for it was his courſe to repent of any thing done contrary to his preſent ſence, and made it his chief principle in policy to have no principle but deſire; wherein he triumphed too long by reaſon of the contentions between the Clergy and the Laity, which coming nigh unto the puſh of the pike, and the King ready for the ſpoil of both; the Barons and Clergy ſuddenly cloſe their files, and like a ſtone-wall ſtood firm to each other till the King wearied with ſucceſsleſs labour

M. Paris. An. 1215. was glad to give and take breath, confirmed the liberties of the people by his Charter, which is now called the *Magna Charta* for ſubſtance, and gave ſuch collateral ſecurity for performance on his part as did let the world know the thing was as juſt as himſelf had been unjuſt: The worſt point in the caſe was that the people got their own by a kind of re-diſſeiſin; a deſperate remedy for a deſperate condition, wherein the Common-weal then lay between life and death upon the rack of the will of a King that would be controuled by nothing but his own appetite, and was in the end devoured by it.

CHAP. LVIII.

Of the ſtate of the Nobility of England *from the Conqueſt, and during the Reign of theſe ſeveral Kings.*

UNder the Title of the Nobility of *England* I ſhall comprehend all ſuch as are of the greateſt eminency for birth or wiſdom and learning, and advancement into place of government and honour. Theſe were in the Saxons times the flower of the people, flouriſhing only from the honour that aſcended from beneath; their deportment then was full of chear and ſafety to the people: after that royalty ſprung up, the influence thereof upon them exhaled ſuch a reciprocal intereſt back again as made them leſs regardful of their own root. Whereas we ſee the more mature flowers are the more propenſe to turn head and look downward to their own original. This diſtemper was yet much worſe by the coming in of the Normans, whoſe Nobility, beſides their Titles of honour in their own Countrey, obtained by cuſtom ſuch command and power amongſt the meaner ſort, being Souldiers under them in time of the ſervice in the field; that when the Wars had breathed out their laſt, neither of them could forget or were very careful to lay aſide. This was obſerved by Kings

Kings, and advantage eſpyed to climb to the top of Monarchy by the help of theſe great men, whom if they could make their own, all would be theirs; and wherein they had prevailed much more than they did, if they had been wiſe enough to have maintained them in unity; but in that failing, Kings were neceſſitated to take parties, and ſerve the Nobility to ſave the main: and thus continued they a conſiderable party in the government of this Kingdom from the Normans for the ſpace of two hundred years well nigh, to the prejudice both of the growth of the prerogative of Kings and liberties of the Commons; and benefit of none but the Lords, who in thoſe unquiet times were the chief Commanders in the field. This errour of Kings was ſoon eſpyed, but could not be avoided; it's natural to man to be proud, and to ſuch to fall into contention: another courſe thereof is taken, *viz.* to raiſe up ſome ſo high as may over-top all, and keep them under; nor is it altogether without reaſon, for Kings are no ubiquitaries, and ſome muſt bear their power where they cannot be perſonally preſent, yet it is dangerous to beſtow too much upon one man; for there is no man fitting to be a King but himſelf that is a King; and where Kings are immoderate in beſtowing power, it many times works much woe to the people, and not ſeldom ſorrow to the Kings themſelves. The place of the chief Juſtice was in ſhew but one Office, yet in theſe times was in nature of the King's Lieutenant-general throughout the Kingdom. A power and work too great for any one man in the World, that can make no deputies to manage it; and yet in thoſe times you ſhall meet with one man made up of an Arch-Biſhop, a Legat, and chief Juſtice of *England*; or a Biſhop, a Lord Chancellour, a Legat, and chief Juſtice of *England*; and a ſtrange kind of government muſt that needs be wherein the Servants Throne is above his Maſters, and a Subject ſhall have a plenitudinary power beyond that which his Lord and King's was, as the times then were, was capable of. By theſe and ſuch like pluralities the great Men of *England* kept the Commons below and themſelves above, and probably rendred the temper of the government of this Kingdom more Ariſto-

Hoveden. 443. 375. *Nubr lib.* 4. *cap.* 14.

Ariſtocratical than in after Ages. And if their perſonal authority was of ſuch value, how much rather in their joynt aſſembly or court of Council; concerning which I muſt agree that as in their original in *Germany* they did conſult and determine of the meaner matters, that is to ſay, of matters concerning property, and therefore were in their moſt ordinary work meetings of Judges, or Courts of Judicature: and alſo matters of defenſive war, becauſe themſelves were the Commanders: and laſtly, in matters of ſudden concernment to the State, not only to ſerve as eyes to foreſee, but to provide alſo if they can, or otherwiſe to call in the ayd of the peoples advice; ſo alſo they continued this courſe, and it may be now and then (as all Councils have done) ſtrained their endeavours beyond their reach (eſpecially ſince the Normans entrance:) and therefore I ſhall not deny but that they alone with the King, and without the Commons, have made many Laws and Conſtitutions, ſome of which now are called Statutes, (although many of them in truth are no other than Rules for Judicature, which ordinary Courts may frame; or Judgments in particular caſes, ſuch as are the conſtitutions at *Clarindon* in *Henry* the Second's time) and many other Laws which are reported to be made between the King and his Lords. Nor can I look upon ſuch Laws otherwiſe than as upon Judgments in Courts of Juſtice in new points of controverſie, grounded upon ancient grounds, which properly are not new Laws, but the ancient Rule applied to new particulars; and being ſo publiſhed to the world, may bear the name of Laws, Ordinances, Conſtitutions, or Judgments; the word Statute being of later times taken up and uſed in a more reſtrictive ſence, of which more in their due place. Now that this Court was a ſettled Court of Judicature, and ſo uſed, may appear in that fines were leavied therein, and Writs of right determined; as in that great caſe between the two Kings of *Navarr* and *Caſtile*, referred to the Judgment of *Henry* the Second, and tried in this Court; it's ſaid that the Tryal was by Plea, and if need were by battel. The Judges in this Court were the Baronage of *England*; for the entry of Judgment in that great caſe is thus,

Hoveden. An. 1175.

Ibid.

Comites

Comites & Barones Regalis Curiæ Angliæ adjudicaverunt, &c. so as though doubtleſs many were abſent, ſome being enemies, others diſcontented, others upon other occaſions, yet all might claim their Votes as Barons. The Preſident over all the reſt was the Chief Juſtice, as if the King were preſent then himſelf; and by him was the ſentence or judgment declared, according to the entry in that caſe aforeſaid, *Habito Concilio cum Epiſcopis, Comitibus & Baronibus adjudicavimus, &c.* The honour of this Court was great ſo long as the Lords had liberty or care to attend thereon: but when Kings began to have private intereſts they would have theſe to be more private Councils, which weakned the eſteem of concluſions that there paſſed, and reduced the honour thereof ſcarce to the degree of a Conventicle; and by this means the neceſſity of calling together the whole Body Repreſentative was made more frequent, the power of the Nobility of *England* decayed, and this Court forfeited all its juridical power to the three Courts at *Weſtminſter, viz.* the *Keng's Bench*, *Common Pleas*, and *Exchequer*; ſaving ſtill the ſupreme Judicature unto the grand Convention of Eſtates in Parliament, where all the Lords had liberty of meeting, and free voting without impeachment.

CHAP. LIX.

Of the ſtate of the Clergy, and their power in this Kingdom from the Norman's time.

IF the prerogative of Kings prevailed not to its utmoſt pitch during the Norman's time, it did much leſs in theſe times ſucceeding, wherein the Clergy took up the Bucklers and beat both King and Commons to a retreat; themſelves in the interim remaining ſole Triumphers in the Field. In their firſt Adventure they paced the Stage, no man appearing to oppoſe: *Steven* then was King by their leave, and their Bondſervant; and they might have any thing ſobeit they would ſuffer him to enjoy

enjoy his Crown. His Brother the Biſhop was the Pope's ſervant, the Church-mens patron, and the King's ſurety; in whom the Clergies favour to the King, and his good behaviour toward them and all men concentred: Beſides all this, the King was but ſo upon condition, and there being no better Title than election, conſcience in thoſe times was well enough ſatisfied in the breach of Covenant on their part; where on the King's part it was firſt broken. All this the King ſaw full well; and therefore what can he deny to ſuch benefactors? Vacancies of Churches he readily parts with; and his right of inveſtiture of the Mitred Clergy he diſpenſed: ſo as he opened the way to his ſucceſſors of an utter dereliction of that privilege. He ſees his Brother the Legat deflower the Crown of *England* by maintaining appeals from the Courts in *England* unto the Court of *Rome*, and he ſays nothing; he is contented with the ſtump of the Crown, and (with *Saul*) if he be but honoured above or before all others of the people, it's his enough: But the Clergy, like the barren womb hath not yet enough. The King hath allowed them Caſtles, and too late he ſees that inſtead of being defences againſt the Imperial power of the Empreſs, they are now made bulwarks againſt the lawful power of a King; he had therefore endeavoured to get them down, and gotten ſome of them into his power. The King himſelf is now ſummoned to anſwer this before a Legatine Council, wherein his Brother is Preſident: that was a bold adventure in them, but it was extreme raſhneſs in him to appear and plead the cauſe of the Crown of *England* before a Conventicle of his own Subjects: And thus to ſecure *Rome* of ſupremacy in appeals, he ſuffers a recovery thereof againſt his own perſon in a Court of Record, and ſo loſes himſelf to ſave the Crown. Thus are Synods mounted up on Eagles wings; they have the King under them, they will next have the Crown. Within a while *Steven* is taken priſoner: the Empreſs perceiving the power of the Clergy, betakes her caſe to them now aſſembled in Synod; they now proud of the occaſion (and conceiting that both Law and Goſpel were now under their decree) publiſh that the election of the King belongeth

belongeth unto them, and by them the Empreſs is elected Queen in open Synod, *Steven*'s Brother leading the game; and had ſhe been as willing to have admitted of the Laws as *Steven* was, ſhe had ſo continued, and had left a ſtrange president in the Engliſh government for poſterity. But the Citizens of *London*, who had made the way to the Throne for *Steven*, reduced the Synod to ſober conſideration, and helped the King's return unto his Throne again, wherein he continued a friend to the Clergy during the reſt of his time.

Henry the ſecond ſucceeded him: as brave a man as he, but beyond him in Title and power, and one that came to the Crown without pre-ingagement by promiſe or Covenant, ſaving that which was proper for a King. A man he was that knew full well the intereſts in the government, the growing power of the Clergy, and the advantages loſt from the Crown by his predeceſſor: and to regain theſe he ſmooths his way towards theſe braving men, ſpeaks fair, profers fair; he would act to encreaſe the bounds of the Church: he would have the Pope's leave to do him a kindneſs, and ſo be it he might gain an intereſt in *Ireland*, he would take it from the Pope; who pretended, as heir of Jeſus Chriſt, to have the Iſlands and utmoſt parts of the earth for his poſſeſſion; and, as if he meaned to be as good to the Church as *Steven* was, and much better, he deſires the Pope's kindneſs for the confirmation of the liberties and cuſtoms of his Crown and Kingdom; and no ſooner deſired than obtained. This was a 2d. example of a King of *England*, but the firſt of an Engliſh King that ſought to *Rome* for right in the Crown; and thereby taught the Pope to demand it as a privilege belonging to the Tripple Crown. Nor was *Henry* the ſecond, leſs benign to the Church-men, till he found by his dear bought experience that he had nouriſhed Scorpions; and would have ſuppreſſed them, but was rather ſuppreſſed himſelf; as in that ſhameful ſucceſs of the death of *Becket* may appear, wherein he yielded the day up to the Clergy, who formerly ſcorned to ſtoop to the greateſt Potentate on Earth. The State of Kings is to be pitied, who muſt maintain a politick affection above, and ſometimes againſt nature it

M. Paris. An. 1155.

Conſtit. at Clarindon.

ſelf, if they will eſcape the note of Tyranny in their undertakings, and of a feeble ſpirit in their ſufferings: For the King having made *Becket* Chancellour of *England*, and then Arch-Biſhop of *Canterbury*, he became ſo great, that his feathers bruſhed againſt the King's Crown, who begins to rouſe up himſelf to maintain his honour and prerogative Royal. The Biſhops ſide with *Becket*: the King intending the perſon, and not the Calling, ſingles out the Arch-Biſhop, and hunts him to ſoil at *Rome*; yet before he went the King puts the points of his quarrel in writing, and made both Arch-Biſhop and Biſhops ſign them as the rights of his Crown, and as the *Conſuetudines Avitæ*: but *Becket* repenting, went to *Rome* and obtained the Pope's pardon and bleſſing, the reſt of the Biſhops yielding the cauſe.

The particulars in debate were ſet down in the nature of Laws or Conſtitutions, commonly called the Conſtitutions at *Clarindon*, which ſhew the prevailing humour that then overſpread the body of the Clergy in thoſe days, and therefore I ſhall ſum them up as follows.

cap. 1. *Rights of Advowſons ſhall be determined in the King's Court.*

This had been quarrelled from the firſt Normans time, but could never be recovered by the Clergy. Before the Normans time the County-courts had them, and there they were determined before the Biſhop and Sheriff; but the Eccleſiaſtical cauſes being reduced to Eccleſiaſtical Courts, and the Sheriff and the Laity ſequeſtred from intermeddling, the Normans, according to the cuſtom in their own Countrey, reduced alſo the trial of rights of Advowſons unto the Supreme Courts: partly becauſe the King's Title was much concerned therein, and the Norman Lords no leſs; but principally in regard that Rights require the conſideration of ſuch as are the moſt learned in the Laws.

cap. 2. *Rights of Tythes of a Lay-fee, or where the Tenure is in queſtion belong to the King's Court.*

Pleas

Pleas of Debts by troth-plight belong to the King's Court. cap. 3.

These were Saxon Laws, and do intimate that it was the endeavour of the Clergy to get the sole cognisance of Tythes, because they were originally their dues; and of debts by troth-plight, because that oaths seemed to relate much to Religion, whereof they held themselves the only professors.

The King's Justice shall reform errours of Ecclesiastical Courts and Crimes of Ecclesiastical persons. cap. 4.

Appeals shall be from Arch-Deacons Courts to the Bishops Courts, and thence to the Arch-Bishops Courts, and thence to the King's Court, and there the sentence to be final. cap. 5.

No man that ever was acquainted with Antiquity will question that these were received Laws in the Saxons time; nor did the Clergy ever quarrel them till the Normans taught them by courtesie done to *Rome* to expect more from Kings than for the present they would grant, whereof see *Cap.* 47. But King *Steven* that was indebted to the Clergy for his Crown, and could not otherwise content them, parted with this Jewel of supreme power in causes Ecclesiastical to the Roman cognisance, as hath been already noted; but *Henry* the second would have none of this cheat at so easie a rate. This struck so smart a blow, as though the Popedom had but newly recovered out of a paralitick Schism, yet seeing it so mainly concerned the maintenance of the Tripple Crown, *Alexander* the Pope having lately been blooded against a brave Emperour, made the less difficulty to stickle with a valiant King; who in conclusion was fain to yield up the bucklers, and let the Pope hold what he had gotten, notwithstanding against this Law, and all former Law and custom. And thus the Popes supremacy in spiritual causes is secured both by a recovery and judgement by confession thereupon. *Constit. at Clarindon.* *Constit. at Clarindon.*

The King shall have vacancies of Churches, and power cap. 6.

to elect by his secret Council; The party elected shall do homage salvo ordine, *and then shall be consecrated.*

This certainly was none of the best, yet it was a custom not altogether against reason, although not suitable to the opinion of many; yet we meet two alterations of the ancient custom. First that the election shall be by the King and secret Council; whereas formerly the election of Bishops and Arch-Bishops was of such publick concernment, as the Parliament took cognisance thereof, and (that which was worse) a Council was hereby allowed, called a secret Council; which in effect is a Council to serve the King's private aims; and unto this Council, power given, in the ordering of the publick affairs without advice of the publick Council of Lords, which was the only Council of state in former times; and thus the publick affairs are made to correspond with the King's private interest, which hath been the cause of much irregularity in the government of this Island ever since. The second alteration resteth in the *salvo*, which is a clause never formerly allowed, unless by practice in *Steven*'s time, when as there was little regard of the one or the other: Nor doth it concurr with the file of story that it should be inserted within these constitutions, seeing that Writers agree it was the chief cause of quarrel between him and *Becket*, who refused submission without the clause, and at which the King stuck with the Arch-Bishop for the space of seven years, which was six years after the Constitutions were consented unto, and concluded upon.

Constit. at Clarendon.

No Clergy-man or other may depart the Realm without the King's License. *cap. 7.*

It's a Law of Nations, and must be agreed on all hands, that no reason of state can allow dispensations therein, especially in a doubtful government, where the Supremacy is in dispute: and this the wilful Arch-Bishop never questioned till he questioned all authority, but in order to his own; for but the year before, when he went to *Turonn* to the general Council upon

upon ſummons, he firſt obtained licenſe from the King before he went. *M. Paris.*

No ſentence of excommunication or interdiction to paſs againſt the King's tenant or any miniſter of State, without licenſe firſt had of the King, or his chief Juſtice in the King's abſence. cap. 8.

Till the Conqueſt no Excommunication, paſſed without warrant of Law made by the joynt aſſembly of the Laity and Clergy; but the Conquerour having let looſe the Canons, and the Clergy having gotten the upper hand in Councils, made Canons as they pleaſed, and ſo the Laity are expoſed to the voluntary power of the Canon: only as well the Normans, as until theſe times, Kings have ſaved their own aſſociates from that ſudden blow, and upon reaſon of religious obſervance, leſt the King ſhould converſe with excommunicate perſons ere he be aware. *Conſtit. at Clarindon.* *vid. cap.*

The Laity are not to be proceeded againſt in Eccleſiaſtical Courts, but upon proof by witneſſes in the preſence of the Biſhop: and where no witneſſes are, the Sheriff ſhall try the matter by Jury in the preſence of the Biſhop. cap. 9.

A negative Law, that implieth another courſe was uſed upon light fame or ſuſpicion *ex officio*, although the oath at that time was not born into the world, and that all this was contrary to the liberty of the Subject, and Law of the Land: and it intimates a ground of prohibition in all ſuch caſes upon the common Law; which alſo was the ancient courſe in the Saxons times, as hath been formerly noted.

Excommunicated perſons ſhall be compelled only to give pledge, and not Oath, or bail to ſtand to the judgement of the Church. cap 10.

Upon the taking and impriſoning of the party excommunicate; the courſe anciently was it ſeemeth to give pledge to ſtand to order: of this the Biſhops were weary ſoon as it ſeemeth *Conſtit. at Clarindon.*

eth; and therefore waved it, and betook themſelves to other inventions of their own, *viz.* to bind them by oath or bail; both which were contrary to Law: for no oath was to be adminiſtred but by Law of the Kingdom; nor did it belong to the Eccleſiaſtical Laws to order oaths or bail, and therefore this Law became a ground of prohibition in ſuch caſes, and of the Writ *de cautione admittenda.*

cap. 11. *Perſons cited, and making default, may be interdicted, and the King's Officer ſhall compel him to obey.*
If the King's Officer make default, he ſhall be amerced, and then the party interdicted may be excommunicated.

So as the proceſs in the Spiritual Courts was to be regulated according to Law: nor did it lie in the power of ſuch Courts to order their own way, or ſcatter the cenſure of excommunication according to their own liking. This together with all thoſe that forego, the Arch-Biſhop upon his repentance abſolutely withſtood, although he had twice conſented and once ſubſcribed to them, having alſo received ſome kind of allowance thereof even from *Rome* it ſelf.

Conſtit. at Clarindon.

c. 12. *Clergy-men holding* per Baroniam *ſhall do ſuch ſervices as to their Tenure belong, and ſhall aſſiſt in the King's Court till judgement of life or member.*

Two things are hereby manifeſt: Firſt, that notwithſtanding the Conquerour's Law formerly mentioned, Biſhops ſtill ſate as Judges in the King's Courts, as they had done in the Saxon times, but it was upon cauſes that meerly concerned the Laity; ſo as the Law of the Conquerour extended only to ſeparate the Laity out of the Spiritual Courts, and not the Clergy out of the Lay-Courts. Secondly, that the Clergy, eſpecially thoſe of the greater ſort, queſtioned their ſervices due by Tenure, as if they intended neither Lord nor King, but the Pope only. Doubtleſs the uſe of Tenures in thoſe times was of infinite conſequence to the peace of the Kingdom, and government of theſe Kings, when as by theſe principally not only all degrees were united and made dependent from the Lord paramont

mont to the Tenant peravale; but especially the Clergy with the Laity upon the Crown, without which a strange metamorphosis in government must needs have ensued, beyond the shape of any reasonable conceit, the one half almost of the people in *England* being absolutely put under the dominion of a foreign power.

Sanctuary shall not protect forfeited goods, nor Clerks convicted or confessed. cap. 13. 14.

This was Law, but violence did both now and afterwards much obliterate it.

Churches holden of the King shall not be aliened without License. Constit. at Clarindon. cap. 15.

It was an ancient Law of the Saxons, that no Tenements holden by service could be aliened without License or consent of the Lord, because of the Allegiance between Lord and Tenant: Now there was no question but that Churches might lie in Tenure as well as other Tenements; but the strife was by the Church-men, to hold their Tenements free from all humane service, which the King withstood.

Sons of the Laity shall not be admitted into a Monastery without the Lord's consent. cap. 16.

Upon the same ground with the former; for the Lord had not only right in his Tenant, which could not be aliened without his consent, but also a right in his Tenant's children, in regard they in time might by descent become his Tenants, and so lie under the same ground of Law: for although this be no alienation by legal purchase, yet it is in nature of the same relation; for he that is in a Monastery is dead to all worldly affairs.

These then are the rights that the King claimed, and the Clergy disclaimed at the first; although upon more sober consideration they generally consented unto the five last: but their Captain Arch-Bishop *Becket* withstood the rest, which cost him his life in the conclusion, with this honourable testimony, that his death *Samson*-like effected more than his life; for the main thing of all the rest the Pope gained to be friends, for the

the loſs of ſo great a ſtickler in the Church affairs, as *Becket* was.

In this Tragedy the Pope obſerving how the Engliſh Biſhops had forſaken their Arch-Biſhop, eſpyed a muſe through which all the game of the Popedom might ſoon eſcape, and the Pope be left to ſit upon Thorns in regard of his Authority here in *England*. For let the Metropolitan of all *England* be a ſworn ſervant to the Metropolitan of the Chriſtian World, and the reſt of the Engliſh Biſhops not concurr, it will make the Tripple Crown at the beſt but double. *Alexander* the Pope therefore meaned not to truſt their fair natures any longer; but puts an oath upon every Engliſh Biſhop, to take before their conſecration, whereby he became bound

Antiq. Brit. 302. *Foxe. An.* 1179.

1. To abſolute allegiance to the Pope and Romiſh Church.
2. Not to further by deed or conſent any prejudice to them.
3. To conceal their counſels.
4. To aid the Roman Papacy againſt all perſons.
5. To aſſiſt the Roman Legat.
6. To come to Synods upon Summons.
7. To viſit *Rome* once every three years.
8. Not to ſell any part of their Biſhoprick without conſent of the Pope.

And thus the Engliſh Biſhops that formerly did but regard *Rome*, now give their eſtates, bodies and ſouls unto her ſervice; that which remains the King of *England* may keep: And well it was that it was not worſe, conſidering that the King had vowed perpetual enmity againſt the Pope; but he wiſely perceiving that the King's ſpirit would up again, having thus gotten the main battel, durſt not adventure upon the King's rear, leſt he might turn head; and ſo he let the King come off with the loſs of appeals, and an order to annul the cuſtoms that by him were brought in againſt the Church, which in truth were none.

M. Paris. An. 1167.

Baronius Annal. 1164. *Sec.* 11.

This was too much for ſo brave a King as *Henry* the ſecond, to loſe to the ſcarecrow power of *Rome*: yet it befel him as many great ſpirits, that favour prevails more with them than fear or power: for being towards his laſt times worn with grief

grief at his unnatural Sons; a ſhadow of the kindneſs of the Pope's Legat unto him, won that which the Clergy could never formerly wreſt from him in theſe particulars granted by him: That, *M. Paris. An. 1176.*

No Clerk ſhall anſwer in the Lay-Courts, but only for the Foreſt, and their Lay-fee. 1.

This favoured more of courteſie than Juſtice, and therefore we find not that the ſame did thrive, nor did continue long in force as a Law, although the claim thereof laſted.

Vacancies ſhall not be holden in the King's hand above one year, unleſs upon caſe of neceſſity. 2.

This ſeemeth to paſs ſomewhat from the Crown, but loſt it nothing; for if the Clergy accepted of this grant, they thereby allow the Crown a right to make it, and a liberty to determine it's own right, or continuing the ſame by being ſole Judge of the neceſſity.

Killers of Clerks convicted ſhall be puniſhed in the Biſhop's preſence by the King's Juſtice. 3.

In the licentious times of King *Steven*, wherein the Clergy played *Rex*, they grew ſo unruly that in a ſhort time they had committed above a hundred murthers. To prevent this evil the King, loth to enter the Liſt with the Clergy about too many matters, let looſe the law of feud, for the friends of the party ſlain to take revenge; and this coſt the blood of many Clerks: the Laity haply, being more induſtrious therein than otherwiſe they would have been, becauſe the Eccleſiaſtical Judge for the moſt part favoured them. As an expedient to all which this Law was made, and ſo the Clergy was ſtill left to their Clergy, and Juſtice done upon ſuch as ſought their blood.

Clergy-men ſhall not be holden to trial by battel. 4.

It was an ancient Law of the Saxons, and either by neglect worn out of uſe, or by the valour of the Clergy laid aſide,

as resolving rather to adventure their own blood, than to end their quarrel before the Lay-Judge by Plea, but grown weary of that course, and likely also put hard to the pinch upon complaints made by them against Clerk-slayers, they are fain to have recourse to their ancient privilege.

Hitherto therefore it's manifest the Clergy were in their growing condition, notwithstanding the policy and power of *Henry* the second, who was the paragon of that Age.

After him reigned *Richard* the first, that must expiate his disobedience to his father by obedience to his ghostly father the Pope in undertaking the holy War; and being gone, left the government in his absence so deeply intrusted to the Clergy, as they could lose nothing of what they had gained, unless they would; and might have gained much more than they did or should; had not the Bishop that was the overseer of the whole Kingdom been drunken with vanity, and spued out his own shame. However the success was, it was not contrary to the principles of those times: for *Richard* had experience in the Emperour *Frederick*, and his Father's example, that the Pope and Clergy were too hard for all the Potentates in *Europe*, and therefore might most safely trust them with all he had at home, whilst he was in their service abroad. Nor were they short of what was intrusted to them, but stuck close for the maintenance of his right to the Crown, and emptied themselves even to the very consecrated Vessels, and procured the Laity of all sorts to do the like, to save the Kingdom from the rape of strangers and usurpers, who esteemed the King dead in Law, and as one buried alive.

Thus passed they to King *John* the government, supposing themselves well enough assured of what they had gotten by their several atchievements, had under the Reigns of three several Kings successively: and King *John* might well enough have understood the times, if he had seriously considered them; but being heightned all his life-time with lawless government, wherein he was trained up in *Ireland*; he knew not how to stoop till he stooped so low as the Legat's knee, and his Crown at the Pope's foot; leaving an example to posterity to beware of striving with the Clergy.

If

If then these sparks of ambition were so violent being alone, certainly in their joynt consultations much more. They had long striven now since the Conquest to have excluded the Laity from their Synods, and about these days effected it; and yet about *Henry* the second's time it may be supposed the thing either was not yet done, or so lately that the Law was not clear in that point; for *Petrus Blecensis*, who was Arch-Deacon of *Bath* about those times, in his Epistle to the Arch-Bishop of *York*, concerning the restraint of the growing sect of the Publicans, he adviseth in these words, *Accipite clerum, congregate populum, & ex eorum communi deliberatione, qui spiritum Domini habent, terribilis constitutio promulgetur, &c.* and if the Historian doth not mistake; the proceedings against that sect being only for errours in Religion, was in a Council of Bishops and Lords. Nevertheless, whether present or absent the Laity sate there as cyphers, making the number great, but not valuable by themselves. For even in the Norman times they were brought so low as the constitution made by the Clergy wrought more upon them, than civility it self can work upon professors of Religion in these days. For it seems excess of long hair was grown to that measure that the Synod cryed out against it, and decreed that men should cut their hair so as their eyes and laps of their ears might be seen, and the King himself, I mean *Henry* the first, submitted to this cut, and made all his Knights to do the like, and exposed themselves to the then odious by-names of clowns or Priests (like to the round-heads of these days) who formerly marched under the Title of *criniti* or Ruffians. This did but touch the hair, but they went to the quick, when they decreed that Lords should not sell their villains, and that outlawries should pass in certain particular cases, as in the constitutions of Arch-Bishop *Anselm* may appear. Afterwards in these Kings times they flew at the throat of the government, got all places of honour, or profit, or power, whether for peace or War under their gripe; deposed and advanced as they pleased, even to the Royal Throne it self; and that not only out of a sudden passion of State, but advisedly concluded it for a maxime, that the election of the King belonged to them as in

M. West. An. 1127.

Antiq. Brit. 150. *ibid.* 155.

the case of the election of *Maude* the Empress, they did hold forth to all the world, and in which the King also then flattered them, as holding their election so necessary that he kept the whole Synod in dures to have their votes for the election of his Son to be his successor.

Ibid. 127.

CHAP. LX.

Of the English Commonalty since the Normans time.

THe dignity of the English Crown thus deflowred by the great men, was no loss to the common people: for as in all decays of Monarchy the great men get nothing if they please not the people, so the King can hold nothing if they be not contented. And yet contented or not contented, they could not gain much; for as affairs stood then in the Christian world, the Politician's discourse of three kinds of government proved idle; neither could Monarchy, Aristocracy, nor Democracy, attain any semblable condition in any place so long as the Church held it's design a part, and prevailed to have the greatest share in all, not now by the favour either of great or small, but by a pretended divine right, through which they now had gotten to their full pitch of Lordship in the consciences of men. It must be acknowledged that this was a distemper in government; yet such it was as kept humours low and restrained the inordinate excesses that in all kinds of government are subject to break forth; so as neither King, nor Lords, nor people could swell into larger proportion than would suit with the ends of the Church-men. But to mind the matter in hand: somewhat the Commons gained in these stormy times: The taxes that they were charged with were rather perswaded than imposed upon them; and generally they were sparing in that work; and it's noted for the honour of King *Steven*, that though he was seldom without war, yet he not only never charged

charged the people with any Tax, but releaſed that of Daneguelt and acquitted the Subject for ever of that Tax, which former Kings challenged as their right; all which ſhew him to be a brave King if he was not a very rich man. *Henry* the ſecond was more heavy becauſe he had more to do: yet find we but one aſſeſſment which was eſcuage (unleſs for the holy War) which was more the Clergy-mens than his. *Richard* was yet a greater burthen: his Reign was troubleſom to him, and he deſerved it; for from the beginning thereof to the ending could never the guilt of his diſobedience to his Father be blotted out; but it was more troubleſome to the people becauſe it coſt ſo much treaſure, was managed by ſuch ill governours (except the Arch-Biſhop of *Canterbury*) and was unſucceſsful in moſt of his undertakings: yet never invaded the liberties of the Commons by any face of prerogative. But what wanted in him was made complete and running over in his ſucceſſor *John*, who (to ſpeak in the moſt moderate ſence of his government) being given over to himſelf, when he was not himſelf, robbed the Lords of their authority, bereaved the Church of it's rights, trod under foot the liberties of the people, waſted his own Prerogative; and having brought all things into deſpair, comes a deſperate cure; the head is cut off to ſave the body, and a preſident left for them that liſt to take it up in future ages. And thus that which *Steven* gave, *Henry* the ſecond loſt, *Richard* the firſt would not regain, and *John* could not; and ſo all were gainers but the Crown.

CHAP. LXI.

Of Judicature, the Courts, and their Judges.

IT is no ſilent argument that the Commons gain, where Laws grow into courſe; and it was the lot of theſe troubleſome

ſome times to lay a foundation of a conſtant government, ſuch as all men might learn, which formerly was laid up only in the breaſts of wiſe experienced men. The two moſt conſiderable points in government is the Law, and the execution; the latter being the life of the former, and that of the Common-weal. I ſay not that the Law was augmented in the body of it, or that the execution had a freer courſe than in the beſt of the former times; but both were more and more cleared to the world in many particulars, as well touching matters concerning practice of the Law, as touching rules of righteouſneſs: for the firſt whereof we are beholding to *Glanvil* in *Henry* the ſecond's time; and for the latter to King *John*, or rather the Barons in his time in the publiſhing of the grand Charter, or an enumeration of the liberties or cuſtoms of the people derived from the Saxons; revived, continued, and confirmed by the Normans and their ſucceſſors; which for the preſent I ſhall leave in *lance dubio*, to ſtand or fall, till occaſion ſhall be of clearing the point, in regard that King *John* ſoon repented of his oath (the bond of his conſent) and to heal the wound, got the Pope's pardon and bleſſing thereupon: ſo eaſie a thing it was for a Son of the Roman Church to paſs for a good Catholick in an unrighteous way.

The execution of the Law was done in ſeveral Courts according to the ſeveral kinds of affairs, whereof ſome concerned matters of crime and penalty; and this touched the King's honour and ſafety of the perſons of himſelf and his Subjects; and therefore are ſaid to be *contra coronam & dignitatem, &c.* The ſecond ſort concern the profits of the Crown, or treaſure of the Kingdom. The third, concern the ſafety of the eſtates of the people. Theſe three works were appointed unto three ſeveral Courts, who had their ſeveral Judges eſpecially appointed to that work. Originally they were in one, *viz.* in the ſupreme Court of Judicature, the Court of Lords, whereof formerly was ſpoken; but after through increaſe of affairs by them deputed or committed to the care of ſeveral men that were men of skill in ſuch affairs, and yet retained the Supremacy in all ſuch cauſes ſtill. And becauſe that which concerned the publick treaſure

p. 174, 5.

was

was of more publick regard than the other, the deputation thereof was committed probably to some of their own members who in those days were Barons of the Realm, and afterwards retained the Title, but not the degree; and therefore were called for distinction sake Barons of the Exchequer. The particular times of these deputations appear not clearly out of any monument of antiquity; nevertheless it's clear to me that it was before *Henry* the second's time, as well because *Henry* the first had his *Judex fiscalis*, as *Glanvil* so frequently toucheth upon the King's Court of pleas, which cannot be intended at the court of Lords, for that in those days was never summoned but in time of Parliament, or some other special occasion: but more principally because the Historian speaking of the Judges *itinerant*, reciteth some to be of the Common pleas; which sheweth that there was in those days a distinction of jurisdiction in Judicatures. And it may very well be conceived that this distinction of Judicature was by advice of the Parliament after that the grand Council of Lords was laid aside by Kings, and a Privy Council taken up, unto whom could not regularly belong any juridical power, because that remained originally in the grand assembly of the Lords.

Gloss.

Ll. Hen. 1. c. 24

Hoveden.

Over these Courts, or two of them one man had the prime Title of chief Justice, who then was called Lord chief Justice of *England*, and whose office was much of the nature of the King's Lieutenant in all causes and places, as well in War as peace; and sometimes was appointed to one part of the Kingdom, and by reason thereof had the name only of that part, and some other of the other parts. The greatness of this office was such as the man for necessity of state was continually resident at the Court, and by this means the King's court was much attended by all sorts of persons, which proved in after times as grievous to the King as it was burthensome to the people. Other Judges there were which were chosen for their learning and experience, most of them being of the Clergy, as were also the under Officers of those Courts, for those times were *Romes* hour and the power of darkness.

Other Courts also were in the Countrey, and were Vicontiel or

or Courts of Sheriffs and Lords of Hundreds and Corporations, and Lordships, as formerly; and these were settled in some place; but others there were which were *itinerant*, over which
Hoveden. certain Judges presided, which were elected by the grand Council of Lords, and sent by commission from King *Henry* the second throughout the Kingdom, then divided into six circuits, unto each of which was assigned three Justices; so as the whole number of Justices then was eighteen. The Office was before the coming of the Saxons over hither, but the assignation was new; as also was their oath, for they were sworn. But the number continued not long, for within four years the King re-divided the Land into four circuits, and unto each circuit assigned five Justices, making in the whole the number of twenty and one Justices; for the Northern circuit had six Justices, which the King made Justices of the Com-
Hoveden. 137. mon pleas throughout the Kingdom. Neither yet did the first
Ibid. 445. commission continue so long as four years; for within that time *Richard Lucy* one of the Justices had renounced his Office and betaken himself to a cloister, and yet was neither named in the first commission nor in the latter; nor did the last com-
Hoved. An. mission continue five years; for within that time *Ralph Glanvil*
1184. removed from the Northern circuit to that of *Worcester*, as by the story of Sir *Gilbert Plumpton* may appear; though little to the honour of the justice of the Kingdom, or of that Judge, however his book commended him to posterity. I take it upon
Co. jurisd. c. 33 the credit of the reporter, that this Itinerary judicature was settled to hold every seven years; but I find no monument thereof before these days.

As touching their power, certainly it was in point of judicature as large as that of the Court of Lords, though not so high: it was as large, because they had cognisance of all causes both concerning the Crown and Common pleas; and amongst
Hoveden. those of the Crown this only I shall note, that all manner of
Glanvil. l. 14. falshood was inquirable by those Judges, which after came to be
c. 7. much invaded by the Clergy.

I shall say no more of this, but that in their original these Iters were little other than visitations of the Countrey by the grand

grand Council of Lords. Nor shall I add any thing concerning the Vicontiel courts and other inferiour but what I find in *Glanvil*: that though Robbery belonged to the King's Court, yet thefts belonged to the Sheriff's Court; and (if the Lords court intercepts not) all batteries and woundings, unless in the complaint they be charged to be done *contra pacem Domini Regis*: the like also of inferiour trespasses, besides common pleas, whereof more shall follow in the next Chapter as occasion shall be.

Glanv. lib. 1. cap. 2.

Idem. lib. 9. & 10.

CHAP. LXII.

Of certain Laws of Judicature in the time of Henry *the second.*

AND hereof I shall note only a few as well touching matters of the Crown as of property, being desirous to observe the changes of Law with the times, and the manner of the growth thereof to that pitch which in these times it hath attained.

1. *Heresie.*

We cannot find in any story that the Saxon Church was infested with any Heresie from their first entrance till this present generation. The first and last Heresie that ever troubled this Island was inbred by *Pelagius*; but that was amongst the Britans, and was first battered by the Council or Synod under *Germanus*; but afterwards suppressed by the zeal of the Saxons, who liked nothing of the Brittish breed, and for whose sake it suffered more haply than for the foulness of the opinion. The Saxon Church leavened from *Rome*, for the space of above five hundred years held on it's course, without any intermission by cross doctrine springing up, till the time of *Henry* the second. Then entred a Sect whom they called Publicans, but were the Albigenses, as may appear by the decree of Pope *Alexander*, whose opinions I shall not trouble my course with: but it seems they were such as crossed their way, and *Henry* the second made the first president of punishing Heresie in the

Hoveden. 585.

Kingdom under the name of this Sect, whom he caused to be brought before a Council of Bishops, who endeavoured to convince them of their errour; but failing therein, they pronounced them Hereticks, and delivered them over to the Lay-power; by which means they were branded in the fore-head, whipped, and exposed to extremity of the cold (according to the decree of the Church) died. This was the manner and punishment of Hereticks in this Kingdom in those days; albeit it seemeth they were then decreed to be burnt in other Countries, if that relation of *Cogshall* be true which *Picardus* noteth upon the 13 Chapter of the History of *William* of *Newberry*, out of which I have inserted this relation.

Nubrig. l. 2. cap. 13.

Decret. Papæ Alexand.

Hoveden. 585.

2. *Apostacy.*

Another case we meet with in *Henry* the second's time concerning Apostacy, which was a crime that as it seems died as soon as it was born; for besides that one we find no second thereto in all the file of English story. The particular was, that a Clerk had renounced his Baptism, and turned Jew; and for this was convicted by a Council of Bishops at *Oxford*, and was burned. So as we have Apostacy punished with death, and Heresie with a punishment that proved mortal; and the manner of conviction of both by a Council of the Clergy, and delivered over to the Lay-power, who certainly proceeded according to the direction of the Canon, or advice of the Council. These (if no more) were sufficient to demonstrate the growing power of the Clergy, however brave the King was against all his enemies in the field.

Bracton, lib. 3. cap. 9.

3. *Treason.*

Treason was anciently used only as a crime of breach of trust or fealty, as hath been already noted; now it grows into a sadder temper, and is made all one with that of *læsa Majestas*; and that Majesty that now a days is wrapped up wholly in the person of the King, was in *Henry* the second's time imparted to the King and Kingdom, as in the first times it was more related to the Kingdom: And therefore *Glanvil* in his book of Laws, speaking of the wound of Majesty, exemplifies sedition and destruction of the Kingdom to be in equal degree a wound of Majesty,

Lib. 1. cap. 2.

Majesty, with the destruction of the person of the King: and then he nameth sedition in the Army, and fraudulent conversion of Treasure-trove, which properly belongs to the King. All which he saith are punished with death and forfeiture of estate, and corruption of blood; for so I take the meaning of the words in relation to what ensueth. *Lib.* 10. *c.* 1.

Felonies, of Man-slaughter, Burning, Robbery, Ravishment, and Fausonry, are to be punished with loss of member and estate. 4. *Felonies.*

This was the Law derived from the Normans, and accordingly was the direction in the charge given to the Justices *itinerant* in *Henry* the second's time, as appeareth in *Hoveden.* But Treason or treachery against the oath, fealty, or bond of allegiance, as of the servants against the Lord was punished with certain and with painful deaths: and therefore though the murther of the King was Treason, yet the murther of his Son was no other than as of another man, unless it arose from those of his own servants. The penalty of loss of estate was common both to Treason and Felony; it reached even unto Thefts, in which case the forfeiture, as to the moveables, was to the Sheriff of the County; unto whose cognisance the case did belong; and the Land went to the Lord immediately, and not to the King. But in all cases of Felony, and of a higher nature, the party (though not the King's Tenant) lost his personal estate to the King for ever, his Free-holds also for a year and a day, after which they returned to the Lord of the soil by way of escheat. It seemeth also that the loss not only of Chattels and goods but also of Lands, *&c.* extended to Outlawries (I conceive in case of Felony) and the King's pardon in such case could not bind the Lord's right of escheat; although it might discharge the goods, and the year and the day whereunto the King was entitled; which case alone sufficiently declareth what power Kings had in the estates of their subjects. *Ll. Hen.* 1 *c.* 25. *Ll. Hen.* 1 *c.* 79. *Glanvil. lib.* 7. *cap.* 17.

Man-slaughter made not bailable. 5. *Man-slaugh-*

This was Law in *Henry* the second's time, although it crossed *ter.*

Glanvil. l. 14. *cap.* 1. & 3. the Norman Law; and queſtionleſs it was upon good ground: for the times now were not as thoſe in the Conquerour's times, when ſhedding of blood was accounted valour; and in moſt caſes in order to the publick ſervice. And now it ſeems it was a growing evil, and that cried ſo loud, as though in caſe of Treaſon bail might be allowed, yet not in this caſe, *ubi ad terrorem aliter ſtatutum eſt*, ſaith the Authour.

6. *Robbery.* Robbers ſhall be committed to the Sheriff, or in his abſence to the next Caſtelane, who ſhall deliver him to the Sheriff. And the Juſtices ſhall do right to them, and unto Treſpaſſers upon Land.

Ll. Gulielm. 4. *Spieil.* 174. By the Conquerour's Law theſe offenders were bailable, and I conceive this was no repeal thereof; and the rather becauſe *Glanvil* alloweth of pledges in all caſes (except Man-ſlaughter) yea in thoſe crimes that did wound Majeſty it ſelf, although they concern the deſtruction of the King's perſon, or ſedition in the Kingdom or Army thereof. The Juſtices herein mentioned were intended to be the Juſtices *itinerant*: and the Treſpaſſes upon Land are meant ſuch as are *contra pacem Domini Regis*, as riotous and forcible entries: for ſome Treſpaſſes were againſt the peace of the Sheriff, as formerly hath been obſerved. *p.* 140.

Glanvil. lib. 14 *cap.* 1.

7. *Fauxonry.* Fauxonry is of ſeveral degrees or kinds: ſome againſt the King, others againſt other men; and of thoſe againſt the King ſome are puniſhed as wounds of Majeſty, as falſifying the King's charter: and whether falſifying of money were in that condition or not I leave, or falſifying of meaſures, yet more inferiour I cannot determine; but it's clear by *Glanvil* that falſifying of the deed of a private perſon was of ſmaller conſideration, and at the utmoſt deſerved but loſs of member.

Glanvil. lib. 14 *cap.* 7.

8. Inheritances may not be aliened.

Glanvil. lib. 7. *cap.* 1. *Ibid. c.* 5. Inheritances were in thoſe times of Lands or goods; for it was the cuſtom then that the perſonal eſtate (the debts deducted) was diviſible into three parts; one whereof belonged

ed in right to the wife as her reaſonable part, the other to the heir, and third to the Teſtator to make his Will of them; and of the other two parts he could not diſpoſe by Will. Concerning Lands, it was regularly true that no man could alien his whole inheritance to the diſheriſin of his heir, either by act in his life time, or any part thereof by his laſt Will, without the concurrence of the heir. But of purchaſed Lands he may give part by act executed in his life time, though he have no Lands by inheritance; and if he hath no iſſue, then he may alien all. And where a Man hath Lands by inheritance, and alſo by purchaſe, he may alien all his purchaſed Lands as he pleaſeth. If the Lands be holden in Gavel-kind, no more of the inheritance can be conveyed to any of the children, than their proportionable parts will amount unto. This Law of inheritance was diverſe according to the Tenure, for the Lands in Knight-ſervice always deſcended to the heir; but ſuch as were holden in Socage paſſed according to the cuſtom, either to the eldeſt, or to the youngeſt, or to all equally. And thus ſtood the general ſtate of inheritance from the Normans times hitherto, ſeeming ſomewhat too ſtrait for the Free-men, that by Law of property might challenge a power to do with their own as they pleaſed. But the Normans ſaw a double prejudice herein: the firſt was the danger of ruine of many of their Families, who now ingrafted into the Engliſh ſtock, and yet not fully, one might expect a late check to their preferments from the Saxon parents after a long and fair ſemblance made of their good will. The ſecond prejudice was the decay of their Militia, which was maintained by riches more than by multitude of men; partly becauſe that rich men are moſt fearful of offending, and therefore ordinarily are moſt ſerviceable both with their bodies and eſtates againſt publick dangers; and partly becauſe by their Friends and Allies they bring more aid unto the publick, by engaging them in the common cauſe, that otherwiſe might prove unſenſible of the condition of their Country.

ſee p. 160.

Ll. Hen. 1. c. 88

9. The heir of a Free-man ſhall by deſcent be in ſuch ſeiſin as his

Vide Glanv. l. 7. c. 9.

his anceſtor had at the time of his death, doing ſervice, and paying relief; and ſhall have his Chattels.

If the heir be under age the Lord ſhall have the Wardſhip for the due time, and the Wife her Dower, and part of the goods.

If the Lord with-hold ſeiſin the King's Juſtice ſhall try the matter by twelve men.

The firſt of theſe branches is declaratory of a ground of common Law; but being applied to the laſt is an introduction of a new Law of trial of the heir's right by Aſſize of Mort-danceſter, where formerly no remedy was left to the heir, but a Writ of right. If theſe three branches be particularly obſerved they ſpeak of three ſorts of heirs, of Tenants by Knight-ſervice, *viz.* ſuch as are majors, or of full age: and ſuch ~~are~~ are minors, or under age: and ſuch as are of a doubtful age. Thoſe that are of full age at the death of their Anceſtors may poſſeſs the Lands deſcended, and the Lord may not diſſeiſe him thereof: but may be reſiſted by the heir in the maintenance of his poſſeſſion, ſo as he be ready to pay relief, and do ſervice that is due: and if the Lord expel him he ſhall have remedy by Aſſize. Thoſe heirs that are minors ſhall be under the Lord's guardianſhip till they come to one and twenty years. The heirs of ſuch as hold by Socage are ſaid to be at full age at fifteen years, becauſe at that age they were thought able to do that ſervice: but the Sons of Burgeſſes are then ſaid to be of full age when they have ability to manage their Father's calling, ſuch as telling of money, meaſuring of cloath, and the like: yet doth not *Glanvil* or any other ſay that theſe were their full age to all purpoſes: albeit that ſome Burroughs at this day hold the laſt in cuſtom to all intents whatſoever. The laſt branch provideth the remedy to recover to the heir his poſſeſſion in caſe it be detained, either through doubtfulneſs of age of the heir, or his Title: and it directs the iſſue to be tryed by twelve men. This trial ſome have thought to be of *Glanvil*'s invention; and it may well be that this trial of this matter as thus ſet down was directed by him: yet he uſeth often in his book the word *ſolet*, and in his preface ſaith, that he will ſet down *frequentius uſitata*;

uſitata; and it's paſt queſtion but that the trial by twelve men was much more ancient, as hath been already noted. One thing more yet remaineth, concerning the Widow of the Tenant, whoſe Dower is not only provided for, but her reaſonable part of her Husband's perſonal eſtate. The original hereof was from the Normans, and it was as popular as that of Wardſhips was Regal; and ſo they made the Engliſh women as ſure to them as they were ſure of their children.

The Juſtices ſhall by Aſſize try diſſeiſins done ſince the King's coming over Sea, next after the peace made between him and his Son. 10.

This is called the Aſſize of Novel diſſeiſin, or of diſſeiſins lately made. It ſeems that the limitation was ſet for the Juſtices ſake, who now were appointed to that work, which formerly belonged to the County-courts; and to prevent intrenchments of Courts, a limitation was determined, although the copy ſeemeth to be miſtaken; for the limitation in the Writ is from the King's laſt voyage, or going into *Normandy*. *Glanv. lib.* 13. *cap.* 33.

Juſtices ſhall do right upon the King's Writ for half a Knights Fee, and under, unleſs in caſes of difficulty, which are to be referred to the King. 11.

The Juſtices *itinerant* ended the ſmaller matters in their circuits, the other were reſerved to the King in his bench.

Juſtices ſhall enquire of Eſcheats, Lands, Churches, and Women, in the King's gift: And of Caſtle-guard, who? how much? and where? 12.

So as the Judges *itinerant* had the work of Eſcheators; and made their circuits ſerve as well for the King's profit as Juſtice to the Subjects. They uſed alſo to take fealty of the people to the King at one certain time of the year, and to demand homage alſo. Theſe matters of the King's Exchequer made the preſence of the Judges leſs acceptable, and it may be occaſioned ſome kind of oppreſſion. And as touching Caſtle-guard, it

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was a Tenure in great use in these bloody times, and yet it seemeth they used to take Rent instead of the personal service; else had that enquiry (how much?) been improper.

13. Of a Tenants holding, and of several Lords.

That one man may hold several Lands of several Lords, and so owe service to them all is so common, as nothing can be more: nevertheless it will not be altogether out of the way to touch somewhat upon the nature of this mutual relation between Lord and Tenant in general, that the true nature of the diversity may more fully appear. The foundation or subject of service was a piece of Land, or other Tenement, at the first given by the Lord to the Tenant in affirmance of a stipulation between them presupposed, by the giving and receiving whereof the Tenant undertook to perform service to the Lord, and the Lord undertook protection of the Tenant in his right to that Tenement. The service was first by promise solemnly bound, either by oath, which the Lord or his deputy by the common Law hath power to administer; as in the case of fealty, in which the Tenant bound himself to be true to the honour and safety of his Lord's person, and to perform the service due to the Lord for the Tenement so given: or otherwise by the Tenant's humble acknowledgement, and promise not only to perform the services due, but even to be devoted to the Lord's service, to honour him, and to adventure limb and life, and be true and faithful to the Lord. This is called Homage, from those words, *I become your man Sir*; and yet promiseth upon the matter no more but fealty in a deeper complement, albeit there be difference in the adjuncts belonging to each. For though it be true that by promise of being the Lord's man, a general service may seem to be implied, yet in regard that it is upon occasion only of that present Tenure, it seemeth to me that it is to be restrained only to those particular services which belong to that Tenement; and therefore if that Tenement be holden in Socage, although the Tenant be bound to homage, yet that homage ties not the Tenant to the service of a Knight; nor contrarily doth the homage of

Glanvil. l. 9. c. 4.

Lit. lib. 2. c. 5.

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a Tenant in Knight-service tie him to that of Socage upon the command of his Lord, though he profesſeth himſelf to be his man. Nor doth the Tenant's homage bind him againſt all men, nor *ad ſemper*; for in caſe he holdeth of two or divers Lords by homage for ſeveral Tenements, and theſe two Lords be in War one againſt the other, the Tenant muſt ſerve his chief Lord of whom the Capital houſe is holden; or that Lord which was his by priority, who may be called the chief Lord, becauſe having firſt received homage, he received it abſolutely from his Tenant; but all other Lords receive homage of ſuch Tenant, with a ſaving of the Tenant's Faith made to other Lords and to the King, who in order to the publick had power to command a Tenant into War againſt his own Lord. If therefore he be commanded by the King in ſuch caſes unto War, he need not queſtion the point of forfeiture; but if he be commanded by a chief of his other Lords into War againſt a party in which another of his Lords is engaged, his ſafeſt way is to enter upon the work, becauſe of his allegiance to that Lord, yet with a *ſalvo* of his fealty to that other Lord. But in all ordinary caſes, Tenants and Lords muſt have regard to their ſtipulation, for otherwiſe, if either break, the other is diſcharged for ever; and if the fault be in the Tenant, his Tenement eſcheats to his Lord; and if the Lord fail, he loſes his Tenure, and the Tenant might thenceforth diſclaim, and hold over for ever. Nevertheleſs the Lords had two privileges by common cuſtom belonging to their Tenures, which although not mentioned in the ſtipulation, were yet more valuable than all the reſt; the one concerning matter of profit, the other of power: That of profit conſiſted in aids and relief. The aids were of three kinds, one to make the Lord's eldeſt Son Knight, the other to marry his eldeſt Daughter; the third to help him to pay a relief to his Lord Paramount; which in my opinion ſounds as much as if the Tenants were bound by their Tenures to aid their Lord in all caſes of extraordinary charge (ſaving that the Lord could not diſtrain his Tenant for aid to his War) and this according to the Lord's diſcretion; for *Glanvil* ſaith that the Law determined nothing

Glanvil. lib. 9. cap. 1.
Lib. 7. cap. 10.
Glanv. lib. 9. cap. 1.
Ibid. cap. 4.
Ibid. c. 8.
Glanv. l. 9 c. 8.
Ibid.

concerning the quantity or value of these aids. These were the Norman ways, and savoured so much of Lordship, that within that age they were regulated; But that of reliefs was an ancient sacrifice, as of first-fruits of the Tenement to the Lord, in memorial of the first Lord's favour in conferring
Ibid. that Tenement; and it was first settled in the Saxons time. The Lord's privilege of power extended so far as to distrain his Tenants into his own Court to answer to himself, in all causes that concerned his right; and so the Lord became both Judge and party, which was soon felt and prevented, as shall appear hereafter. Another privilege of the Lord's power was over the Tenant's heir after the Tenant's death, in the disposing of the body during the minority and marriage of the same. As touching the disposing of the body, the Lord either
Glanv. 7. 10. retained the same in his own power, or committed the same to others; and this was done either *pleno jure*, or rendring an
Ibid. c. 12. account. As concerning the marriage of the Females that are heirs, or so apparent: the parents in their life-time cannot marry them without the Lord's consent; nor may they marry themselves after their parents death without the same; and the Lords are bound to give their consent, unless they can shew cause to the contrary. The like also of the Tenant's widows that have any dowry in the Lands of such Tenure. And by such like means as these the power of the Barons grew to that height, that in the lump it was too massie both for Prince and Commons.

14. Of the power of the last Will.

It is a received opinion, that at the common Law no man could devise his Lands by his last Will. If thereby it be conceived to be against common reason, I shall not touch that; but if against custom of the ancient times, I must suspend my concurrence therewith until those ancient times be defined: for as yet I find no testimony sufficient to assert that opinion; but rather that the times hitherto had a sacred opinion of the last Will, as of the most serious, sincere, and advised declaration of the most inward desires of a man, which was the main thing

thing looked unto in all conveyances, *Voluntas donatoris de cætero observetur.* And therefore nothing was more ordinary than for Kings in these times, as much as in them did lie, to dispose of their Crowns by their last Will. Thus King *John* appointed *Henry* the third his successor, and *Richard* the first devised the Crown to King *John*; and *Henry* the first gave all his Lands to his daughter; and *William* the Conquerour by his last Will, gave *Normandy* to *Robert*, *England* to *William*; and to *Henry* his mothers Lands. If then these things of greatest moment under Heaven were ordinarily disposed by the last Will, was it then probable, that the smaller Free-holds should be of too high esteem to be credited to such conveyances? I would not be mistaken, as if I thought that Crowns and Empires were at the disposal of the last Will of the possessor; nor do I think that either they were thus in this Kingdom, or that there is any reason that can patronize that opinion; yet it will be apparent that Kings had no sleight conceit of the last Will, and knew no such infirmity in that manner of conveyance, as is pretended; or else would they never have spent that little breath left them in vain. I have observed the words of *Glanvil* concerning this point, and I cannot find that he positively denyeth all conveyance of Land by Will, but only in case of disherison; the ground whereof is, because it's contrary to the conveyance of the Law: and yet in that case also alloweth of a disposing power by consent of the heir, which could never make good conveyance, if the Will in that case were absolutely void, and therefore his Authority lies not in the way. Nor doth the particular customs of places discountenance, but rather advance this opinion; for if devises of Lands were incident to the Tenure in Gavel-kind, and that so general in old time, as also to the burgage Tenures, which were the rules of Corporation and Cities, *Ubi leges Angliæ deperiri non possunt nec defraudari nec violari*, how can it be said contrary to the common law? And therefore those conveyances of Lands by last Will, that were in and after these times holden in use, seem to me rather remnants of the more general custom wasted by positive Laws, than particular customs growing up against the

M. Paris. An. 1216. *Hoveden. An.* 1199. *Malmsb. nov. l.* 1. *Malmsb. l.* 3.

Glanvil. l. 7. *cap.* 1. & 5.

Ll. Guliel. cap. 61.

common rule. It's true that the Clergy put a power into the Pope to alter the Law, as touching themselves in some cases: for *Roger* Arch-Bishop of *York* procured a faculty from the Pope to ordain, that no Ecclesiastical person's Will should be good unless made in health, and not lying in extremity: and that in such cases the Arch-Bishop should possess himself of all such parties goods: but as it lasted not long, so was himself made a president in the case: for being overtaken with death e're he was provided, he made his Will in his sickness, and *Henry* the second possessed himself of his estate. And it's as true that Feme coverts in these days could make no will of their reasonable part, because by the Saxon Law it belonged joyntly to the children. Nor could Usurers continuing in that course at the time of their death make their Will, because their personal estate belonged to the King after their death, and their Lands to their Lords by escheat, although before death they lie open to no censure of Law; but this was by an especial Law made since the Conquerour's time; for by the Saxon Law they were reputed as Out-laws. Nevertheless all these do but strengthen the general rule, *viz.* that regularly the last Will was holden in the general a good conveyance in Law. If the Will were only intended and not perfected, or no Will was made, then the Lands passed by descent, and the goods held course according to the Saxon Law, *viz.* the next Kinsmen and Friends of the intestate did administer, and as administrators, they might sue by Writ out of the King's Court, although the Clergy had now obtained so much power as for the recovery of a Legacy, or for the determining of the validity of the Will in it's general nature, it was transmitted to the Ecclesiastical Court.

M. Paris. An. 1181. *Hoved. An.* 1181. *Decret. Alex. pap. Hoveden. fo.* 587.

Glanv. l. 7. *cap* 5 & 16.

Ll. Edw. 37.

Glanv l. 7. *c.* 6. *cap.* 8.

CHAP.

CHAP. LXIII.

Of the Militia of this Kingdom during the Reign of these Kings.

I Undertake not the debate of right, but as touching matter of Fact ſhortly thus much: that from the Norman times the power of the Militia reſted upon two principles: the one the allegiance for the common defence of the King's perſon, and honour, and Kingdom; and in this caſe the King had the power to levy the force of the Kingdom, nevertheleſs the cauſe was ſtill under the cogniſance of the great Council, ſo far as to agree or diſavow the War, if they ſaw cauſe; as appeared in the defections of the Barons in the quarrel between King *Steven* and the Empreſs, and between King *John* and his Barons. The other principle was the ſervice due to the Lord from the Tenant, and by vertue hereof (eſpecially when as the liberty of the Commons was in queſtion) the Militia was ſwayed by the Lords, and they drew the people in Arms either one way or the other, as the caſe appeared to them: the experience whereof the Kings from time to time felt, to their extreme prejudice, and the Kingdoms damage. Nor did the former principle overſway the latter, although it might ſeem more conſiderable, but only in the times of civil peace, when the Lords were quiet, and the people well conceited of the King's aims in reference to the publick, which happineſs it was *Henry* the ſecond's lot to enjoy; for he being a Prince eminent amongſt Princes both for endowments of mind and of outward eſtate, not only gained honour abroad, but much more amongſt his own people at home, who ſaw plainly that he was for foraign employment of honour to the Kingdom; and not only contented with what he had in *England*, but imbarqued together with the Laity againſt the growing power of the Clergy, for the defence and honour of the privileges of

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the Crown, wherein also the liberties of the people were included: They therefore were secure in the King's way, and suffered themselves to be engaged unto the Crown further than they or their Ancestors formerly had been, out of pretence of sudden extreme occasions of the Kingdom that would not be matched with the ordinary course of defence. For the King (finding by former experience that the way of Tenures was too lame a supply for his acquests abroad, and that it had proved little better than a broken reed to the Crown in case of dispute with the people) aimed at a further reach than the Lords or Commons foresaw; and having learned a trick in *France*, brought it over, (although it was neither the first nor last trick that *England* learned to their cost from *France*) which was a new way of levying of Men and Arms for the War, by assessing upon every Knight's fee, and upon every Free-man, of the value of sixteen marks yearly, their certain Arms; and upon every Free-man of ten marks yearly value, their certain Arms; and upon every Burgess and Free-man of an inferiour value, their certain Arms. 2. That these should be ready prepared against a certain day. 3. That they should be kept and maintained from time to time in the King's service, and at his command. 4. That they should not be lent, pledged, sold, or given away. 5. That in case of death they should descend to the heir, who if under age should find a man to serve in his stead. 6. That in case the owner were able, he should be ready at a certain day with his Arms for the service of the King *ad fidem Domini Regis & Regni sui*. 7. That unto this every man should be sworn: I call this a new way of levying of Arms and Men, not but that formerly other Free-men and Burgesses found Arms, albeit they held not by Knight-service; for it was so ordained by the Conquerour's Laws formerly used: but now the King thrust in two clauses (besides the altering of the Arms) the one concerning the oath whereby all men became bound; the other concerning the raising and ordering of Men and Arms, which here seems to be referred to the King only, and in his service; and this I grant may imply much in common capacity, *viz.* that all the power of the Militia is in *Henry* the second.

Hoveden. 1181.

cond. But this trick catched not the people according to the King's meaning: for the words *ad fidem Regis & Regni* ſtill left a muſe for the people to eſcape, if they were called out againſt their duty to the Kingdom, and taught the doctrine which is not yet repealed, *viz.* That what is not according to their Faith to the Kingdom, is not according to their Faith to the King, and therefore they could find in their hearts ſometimes to ſit ſtill at home, when they were called forth to War: as may appear in one paſſage in the days of King *John*, who had gathered together an Army for the oppoſing of foraign power, at ſuch time as the Pope had done his worſt againſt him and the whole Kingdom; which Army was of ſuch conſiderable ſtrength, as I believe none ſince the Conqueſt to this day exceeded or parallell'd it: but the King's mean ſubmiſſion to the Pope's Legat ſo diſtaſted the Nobles and people, as they left him to his own ſhifts; and that in ſuch manner, as although afterwards he had advantage of them and liberty enough to have raiſed an Army to have ſtrengthned himſelf againſt the Nobles, yet the Lords coming from *London*, brought on the ſudden ſuch a party as the King was not able to withſtand, and ſo he came off with that concluſion made at *Renny-mead*, which though in it ſelf was honourable, yet loſt the King ſo much the more, becauſe it was rather gained from him than made by him.

CHAP. LXIV.

Of the Government of Henry *the third*, Edward *the firſt, and* Edward *the ſecond, Kings of England. And firſt a general view of the diſpoſition of their government.*

ONe hundred and ten years more I have together taken up, to add a period to this firſt part of diſcourſe concerning Engliſh government; principally becauſe one ſpirit of

of arbitrary rule from King *John* seemeth to breath throughout the whole, and therewith did expire.

The first that presents himself is *Henry* the third, begotten by King *John* when he was in the very first enterprize of oppression that occasioned the first Barons bloody Wars, and which this King was so miserable as to continue for the greatest part of his Life and Reign; and yet so happy as to see it ended about four years before he died. Although the soul be not ingendred from the parent, yet the temperature of the body of the child doth sometimes so attemper the motion of the soul, that there is in the child the very image of the Father's mind: and this *Henry* the third lively expressed, being so like unto his Father *John* in his worst course, as if his Father's own spirit had entred into him, and animated him in all his ways. He brought in with him the first president of conscience in point of succession by inheritance in the English Throne; for the stream of probabilities was against him. He was a child, and the times required a compleat man, and a man for War: He was the child of King *John*, whose demerits of the State were now fresh in the minds of all Men. He was also designed to the Throne by his Father's last Will, which was a dangerous president for them to admit, who had but even now withstood King *John*'s depositing of the Crown in the Pope's hands, as not being in the power of a King of *England* to dispose of his Crown according to his own Will. Yet leaping over all these considerations, and looking on *Henry* the third as the child of a King, that by good nouriture might prove a wise and just King: they closed about this spark, in hope it might bring forth a flame whereby to warm themselves in stormy times. Nor did their hopes soon perish; for during his minority the King was wise to follow good Counsel, and by it purged out all the ill humours that the Kingdom had contracted in the rash distempers of his Father's government: Nor did he only follow the counsels of others herein, but even at such times as their counsels crossed, he chose those Councils that suted with the most popular way; as is to be seen in the different counsels of the Arch-Bishop

M. Paris. An. 1216.

ſhop of *Canterbury* and *William Briware*. And yet two things troubled much thoſe times: one that they were times of parties; the other, that the Protector was ſomewhat too excellent to be a meer ſervant; and it's hard for the Engliſh Nobility to endure him to be greater; although it may ſeem reaſonable, that they that are thought worthy to govern a King ſhould be much more worthy to govern themſelves. But the Pope put an end to all occaſion of queſtion hereabout; for by his brief he declares the King to be ſixteen years old, and of age to govern himſelf; and therefore all Caſtles are forthwith to be rendred up into the King's hands. This proved the rock of offence, whilſt ſome obeyed the Pope, and were impugners of thoſe that put more confidence in the Caſtles than in the King's good nature. Hence firſt ſprang a civil broil, thence want of Money, then a Parliament; wherein the grand charter of *Englands* liberties once more was exchanged for a ſum of Money. Thus God wheeled about ſucceſſes. But the King having paſſed over his tame age under the government of wiſe Counſellors, and by this time beginning to feel liberty, it was his hard condition to meet with want of Money; and worſe, to meet with ill Counſellors, which ſerved him with ill advice, that the grand Charter would keep him down, make him continually poor, and in ſtate of pupilage: to this giving credit, it ſhaped an Idea in his mind that would never out for forty years after; and thus adviſed he neglects his own engagement, defies the government that by his Royal word, and the Kings his predeceſſors in cool blood had been ſettled; and that he might do this without check of Conſcience, he forbad the ſtudy of the Law, that ſo it might die without heir, and he have all by Eſcheat. This ſadded the Engliſh and made them drive heavily; the King (to add more ſtrength) brought in Foraigners and foraign Councils: and then all was at a ſtand. The Councils were for new ways. The great deſign was to get money to ſupply the King's wants; and as great a deſign was to keep the King in want: otherwiſe it had been eaſie for thoſe at the helm to have ſtopped the concourſe of Foraigners (other than

M. Paris. An. 1223.

M. Paris. An. 1223. 1224.

themſelves) from abroad; the confluence of the Queens poorer Allies, laviſh entertainment, profuſe rewards, cheats from *Rome*, and all in neceſſitous times. But ſtrangers to maintain their own intereſts muſt maintain ſtrangeneſs between the King and his Subjects; to ſupply therefore theſe neceſſities all ſhifts are uſed, as revoking of Charters, diſplacing of Officers, and fining them, Afforeſtations with a train of oppreſſions depending thereon, fines and amercements, corrupt advancements, loans, and many tricks to make rich men offenders, eſpecially projects upon the City of *London*. Nevertheleſs all proved infinitely ſhort of his diſburſements, ſo as at times he is neceſſitated to call Parliaments, and let them know his wants. At the firſt the people are ſenſible and allow ſupply; but after by experience finding themſelves hurt by their ſupplies to the King, they grant upon conditions of renewing the power of the great Charter; and many promiſes paſs from the King to that end, and after that Oaths, and yet no performance; this makes the people abſolutely deny ſupplies. Then the King pretends Wars in *France*, Wars in *Scotland*, and Wars againſt the Infidels in the *Holy-land*, whither he is going: the people upon ſuch grounds give him aids, but finding all but pretences, or ill ſucceſs of ſuch enterpriſes, they are hardned againſt ſupplies of him for the holy War: then he ſeems penitent, and pours out new promiſes, ſealed with the moſt ſolemn execration that is to be found in the Womb of ſtory, and ſo punctually recorded, as if God would have all generations to remember it as the ſeal of the covenant between the King of *England* and his people, and therefore I cannot omit it.

M. Paris. An 1253. It was done in full Parliament, where the Lords Temporal and Spiritual, Knights, and others of the Clergy, all ſtanding with their Tapers burning. The King himſelf alſo ſtanding with a chearly countenance, holding his open hand upon his breſt, the Arch-Biſhop pronounced this curſe enſuing.

By the authority of God omnipotent, of the Son, and of the Holy Ghoſt, and of the glorious Mother of God the Virgin Mary, *and of the bleſſed Apoſtles* Peter *and* Paul, *and of all the other Apoſtles, and*

and of the Holy Martyr and Arch-Bishop Thomas, *and of all the Martyrs, and of the blessed* Edward *King of* England, *and of all Confessors and Virgins, and of all the Saints of God.*

We Excommunicate and Anathematize, and sequester from our holy Mother the Church, all those which henceforth knowingly and maliciously shall deprive or spoil Churches of their right.

And all those that shall by any art or wit rashly violate, diminish or change, secretly or openly, in deed, word or counsel, by crossing in part or whole those Ecclesiastical liberties, or ancient approved customs of the Kingdom, especially the liberties and free customs which are contained in the Charters of the common liberties of England, *and the Forests, granted by our Lord the King to the Arch-Bishops, Bishops, Prelates, Earls, Barons, Knights, and Free holders.*

And all those who have published, or being published have observed any thing against them or their Statutes, or which have brought in any customs, or being brought in have observed; and all Writers of Ordinances or Councils, or executioners, or such as shall judge by such things.

All such as are knowingly guilty of any such matters shall ipso facto *incur this sentence: such as are ignorantly guilty shall incur the same censure, if being admonished he amend not within fifteen days after admonition.*

In the same censure are comprehended all perturbers of the peace of the King and Kingdom: for everlasting memory whereof we have hereunto put our Seals.

And then all throwing down their Tapers extinguished and smoking, they said, *So let all that shall go against this curse be extinct, and stink in Hell.* The King all the while continuing in the posture above-mentioned, said, *So God me help, I will observe all these things sincerely and faithfully, as I am a Man, as I am a Christian, as I am a Knight, as I am a King crowned and anointed.*

If we shall pare away the superstitious ceremonies, and consider divine providence, we may search into all Histories of all ages, and we shall not find a parallel hereunto; so seriously composed, solemnly pronounced, with an *Amen* from the representative body of the whole Kingdom, put

in writing under seal, preserved to posterity; vindicated by God himself in the ruine of so many opposers. And yet the dust of time hath almost buried this out of the thoughts of men; so as few even of such as know it do seriously consider how far it may yet and even now be charged upon the account of this Nation. Serious as it was, it was soon forgotten: nor would the King be long holden with promises, some unhappy Star struck him in his birth: he had been too hard for his promises, and now having the Pope at his elbow, he can dispence with his oath, and bid defiance to an execration: and in flat defiance of the grand Charter professeth oppression, accumulates foraign Counsellors, and foraign guards, contemns his own people, ushers in the Pope's extortions upon them to fill up the measure: thrives in nothing but in the match of his Son and Successor with a Sister of *Spain*, and yet that also helps to hasten on the publick poverty, and that a Parliament that brought forth a bloody issue; although not by any natural power, but occasionally: For the Barons mean now no longer to trust to promises; strangers are banished the Realm, and others of the English blood stepped into their places and Revenues. But this was not all, the King must confirm the grand Charter, and thereto he addeth not only his own oath, but causeth the Prince his Son to confirm the same in like manner. It is likewise propounded to him that the chief Officers of the Kingdom may be chosen such as the Parliament shall like of: And that other Laws meet for the government of the Kingdom might be established: of all these the King made no bones. And to make Men believe that he was in good earnest, he was contented to disrobe and disarm himself, and invest the Barons both with Sword and Scepter, retaining nothing but the Crown for himself. *Dan.* This had been safety enough for the Kingdom, but that it was a conclusion without an agreement; for as it was on the King's part made from a principle of shame and fear, so it was determined in anger; for after that the King had been thus dreſt and girt for the space of four or five years (whatsoever he thought all the while it's no matter) he began first to

stretch

ſtretch his conſcience, and having the Pope's diſpenſation to help, ſoon makes his oath to flie aſunder (although his Son had for the preſent more conſcience.) But the other girt held more ſtoutly, for the Lords had the Sword chained to their Arm by the King's own grant. *Liceat omnibus in regno noſtro contra nos inſurgere & ad gravamen noſtrum opem & operam dare ac ſi nobis in nullo tenerentur*; and the Lords maintained their hold, though not without ſome jealouſies amongſt themſelves: and it's very probable had the King been a little longer breathed with patience, he might have had his will upon eaſier terms: for the Lords were not ſo jealous of one another as the Commons were jealous of the Lords, that they meaned to rule only for themſelves. But the King now being in a wood, and bemired, ſo as he muſt now reſolve to get all, or loſe all, and ſo either ſatisfie his natural deſires, or the remainder of his politick power, entred the field with the aid of thoſe Commons that choſe rather to be oppreſſed by one King than many Lords: and thus the Lords received the firſt blow, and gave the firſt foil: afterwards being worſted by their own diviſions and jealouſies, they left a victory to the King that might have made him abſolute, if he had been moderate; but purſuing revenge too far, he was diſtaſted of his own party that looked on him as a *Polyphemus* that intended to devour the enemy firſt, that he might more freely feaſt upon themſelves in the iſſue: this made victory follow the King a far off, and taught the King that the end of civil War muſt be attended with moderation in the Conquerour, ſo far as may ſtand with publick ſafety; or otherwiſe he that is conquerour to day by Sword, may be conquered to morrow by jealouſie. Thus many humours conſumed, and all parts tired after four years continual War, the State cometh to it's right Wits. The King's gains in all this bloody ſweat may be ſummed up in two heads: Firſt, that he had liberty to chuſe his principal Officers of State by advice of the Lords, and them alſo to diſplace by like Council. Secondly, in that he gained (though at a dear rate) wiſdom to obſerve the ſtate of affairs, and to apply himſelf according to occaſion: ſo lived *Henry*

Dan. An. 1258.

the

the third for three or four years after these troubles; long enough to let the World know that he was able to govern like an English King, and to teach his Son by his own late experience to be a wise governour betimes.

Edward. 1. For *Edward* the first being trained up in the Tragedy of a civil War, wherein he was one of the chief actors; and having expiated the bloody way of his riotous youth by his holy War, as they called it; now he betakes himself to amends making by Justice in government, having found by his Father's experience that a Kingdom well governed (like good husbandry) preserves the owner, but being neglected destroys both.

He came over in his third year in *August*, was crowned in *September*, summoned a Parliament in *February* following, but adjourned it till after Easter: and then it is found that the Church of late had been ill governed, the Clergy-men grieved by many ways, the people otherwise handled than they ought to be, the peace ill kept, the Laws less used, and delinquents less punished than was meet; and in the fence of these inconveniences were the Laws of *Westminster* the first made, wherein the world may see the great difference between the Prince and the King in one and the same man.

The most part of those Laws were little other than plaisters applied to particular botches of those times, wherein the King dealt with a tender hand, as if he feared to ulcerate any part, and especially the Clergy, and therefore delivered the last Law in a petitionary way to the Clergy, because it concerned the execution of Justice in prohibited times, and yet bound up all with a *salvo* to himself and his prerogative, like a wise King that would neither lose right, nor do wrong; nor yet stickle to debate with his subjects now, when as his eye was upon a further mark. For *Leolin* the Prince of *Wales* had affronted him; and though he could not endure affronts, yet could he dissemble them for advantage, and so he suffered the Parliament to run it's course, that he might have done the sooner. Otherwise he had a seed of his Father's conceit that Laws are not made for Kings, as appeared afterward: for after he had gotten his Army into the field, he took a fifteenth

Walsing. 46.

which

which was granted to his Father, and this was *inaudito more*: but there was no disputing with power, and therefore the subject must be contented rather to score it up against the future, than require present pay; so dangerous a thing it is for *England*, that Kings should have occasion to gather Armies, though for never so honourable employment. *M. West. An. 1276.*

The Welsh chase is hotly pursued, yet it did not rid much way; for it cost the English a voyage of nine years travel before they could attain the shore, although it had been often within their view. It may be the King found it advantageous for his government to maintain an Army in the field under the colour of the Welsh War, that he might more bow his subjects to his own bent; for during these Wars the King made many breathings, and took time to look to the husbanding of his own revenue, as those Ordinances called *Extenta manerii*, and *Officium Coronatoris* do witness, and the Statute of *Bigami*. But the people were not altogether yet tamed; for the times being still in Wars, and they occasioning much wast of Treasure, put the King to the utmost pitch of good husbandry, and one degree beyond the same: so as under colour of seising his own, he swept up also the privileges and liberties of his subjects; some Authours reciting the complaints of the Church men, others of the Laity: so as it seemeth the King was no respecter of persons but his own. This and others not unlike had, almost occasioned another cōbustion, had not the meeting at *Glocester* settled things for the present, by referring the right of Franchises to debate in the Eyer, and ordering reseisure of such liberties into the subjects hands, whereof they had been dispossessed by *Quo warranto* and *Quo jure*, under colour of the fourth chapter of the Statute of *Bigami*. *M. West. Polyd. virg.*

Nevertheless however debonair the King seemed to be, the sore between him and his subjects was not fully cured; nor did the Lords trust him further than needs must, for whether they served in the field or met at Council, still they were armed, and during this daring of each other were many profitable Laws made, whilst neither party durst venture bloodshed in touching too nigh upon the privileges of each other, principally because

becauſe the affairs in *Wales* were but laid aſleep, and upon reviving might turn the ballance to either ſide.

The Wars awake again, and therein are conſumed nigh five years more of the King's reign, ſo as whatever his intent was, he could have hitherto little opportunity to effect any thing for the advancement of the prerogative of the Crown at home. Nor had he ſcarcely breathed himſelf and Army from the Welſh Wars, but he found both *France* and *Scotland* his enemies at once. The King faced only the firſt, and fought the ſecond; which held him work the remainder of his days, and at the ſame time alſo he arred both the Clergy and Laity at his own home, as if providence had given him ſecurity for the good behaviour; and yet it failed him in the iſſue, and left him to the cenſure of the world, whether his Juſtice was ſpontaneous or by neceſſity; for as yet he held the grand Charter at parley, and therefore was rather eyed than much truſted: Albeit he was put upon confidence in the Subjects diſcretion for aid of him in his continual undertakings: nor did they diſclaim him herein, however chargeable it was; for all ſeem willing he ſhould be employed any where, ſo as not within the four Seas.

It's probable the King knew it, and therefore having made a voyage into *France*, he changed the Scene of War, but to the other ſide as it were of a river, in hope his Lords would follow; but it would not be; this angred him, and he them: nor would his Clergy allow him any aid *Papa inconſulto*, and therefore he outs them from his protection; theſe and his irregular preparations for War, by ſummons not only of his Knights, but all other that held Land worth 20 *l. per annum*, and Taxes impoſed by an arbitrary way, encreaſed rancour into a kind of State-ſcoul, little better than a quarrel: for appeaſing whereof the King granted a conſultation upon a prohibition, and unto both Clergy and Laity a confirmation of the grand Charter at the long run, and allowed it as the common Law of the Kingdom, and ſeconded the ſame with many ſucceeding confirmations in the twenty ſeven, & twenty eighth years of his reign, as if he had utterly renounced all thought of a contrary way; but the Stat. in his 28*th.* year had a ſting in the tail that was as ill as his

Walſing. 69.

25 *Edw.* i.

ſaving

saving of ancient aids and prisals which was in the Stat. of confirmation of the Charters, though it were omitted in this Stat. for the saving was of such a sence as time and occasion would move the King's heart to make it; and thus this Statute became like a *Hocus pocus*, a thing to still the people for the present, and serve the King's turn, that he might more freely intend the conquest of the Scots; which once done, he might, if he would, try masteries with *England*. But God would not have it so; the King in *Scotland* had power to take, but could not overtake; and the Scots like birds of the prey, had wit enough to fly away, and courage enough to return upon advantages: and so the King was left to hunt the wind, which made him to return.

He might now expect the applause of his people for his good success, and the terrour of those that had stopped the broad way of his extravagant prerogative; and therefore looks big, rubs up old sores, and (having his Army yet in the field) sends for those Lords that would not follow him in his Wars in *Flanders*: all come and submit, and as it were in so many words let the King know that all *England* is now tame, and like to be ridden at his discretion. And now there's nothing in his way but the fatal execration, which he feared, not in relation to God's anger; but rather to the exasperated Clergy, and the dread of the Pope's direful thunderbolt. To avoid this storm he procures a dispensation from *Rome* to perjure and oppress without sin. A trick that he learned of his Father, and hid it within his breast, till now about two years before his end he brings it forth, to tell all the World that hitherto he had been just against his will. But having obtained his purpose, he nevertheless misseth of his end, for a new King of Scots, our old good enemies, by divine providence suddenly crossed his way before him, and now it boots not to contend for arbitrary rule in *England*, and lose the Crown of *Scotland*, which he once thought he had sure; he faces about therefore, and having spoken fair to his people, for *Scotland* he goes. Thus, if all were not in a parenthesis, the King intended a good period, but God only knows what his furthest reach would have been, if he had returned, for he was

taken out of this world in *Scotland*, and so left this his government somewhat like an imperfect sentence.

Edw. 2. His Son *Edward* should have compleated it, but that he wanted his Father's sence, and had too much of his Grandfather's superbient humour, that meeting with a stiff spirit, and a weak mind brought sudden fire into the course of government till it consumed it self in it's own flame. For this King having newly slipt out of a bondage of wise government under his Father, ran the wild chase after rash desires, spending his former time in inordinate love, and his latter time upon revengeful anger, little inferiour to rage; and so in his whole government was scarce his own man. His love was a precedent of a strange nature, that commanded him from all the contentments of his Kingdom to serve one man; a stranger, and prostitute to all manner of licentiousness; meerly for some personal endowments. It shews that his judgement was weak, and his affections strong; and in that more weak, because he discovered it before he was crowned: like some of the weakest of the weaker Sex, the birth of whose minds are born as soon as they are conceived, and speak as soon as they are born. It's true that the bravery of Spirit may work after absoluteness in Kings under the colour of some kind of wisdom. But it is one thing to rule without Law, and another to live without rule; the one dashes against the Law of an English King, and may put on the name of policy, but the other destroys the Law of mankind, and can bear no better name than of brutish desire.

All the while *Gaveston* was in view, we find nothing concerning Common-weal, or monument of Parliament, saving two Ordinances made by the King, and such Lords as suted to the King's way, rather than to his wants. The first was that *de militibus*, the other *de frangentibus prisonam*; for all the King's labour was to royallize *Gaveston* into as high a pitch as he could, and so to amaze his own eye-sight with contemplating the goodlineſs of his person. So as *Gaveston* is become the image of the King, and presents his beams and influence into all parts of the Kingdom, and according to his aspect they often change

1. Edw. 2.

and

and wane, and yet at the best were but as in a misty night.

The Barons liked not this condition of State-Idolatry, they were willing to adore the King, but they could not bow to an image: they desired nothing more than that their King might shine in his proper glory. Thrice is *Gaveston* banished, thrice he returns; the last occasioned another civil War, wherein *Gaveston* lost his head; thus the Lords removed the Eclipse, but (little the better thereby) they find it a vain labour to compel the Sun to shine by force when it hath no light. Though *Gaveston* be gone, the mist of foraign Councils prevail; this was bred in the blood, fed with blood, and ended in blood. Through the Glass of foraign Councils all things seem of foraign colour; the King to the people, and the people to him. The King at length begins to see himself undervalued, and that it began in himself, ventures himself into the Wars with *Scotland* to win honour; goes with much splendour, but returns with the greatest blot that ever English King suffered, confounded abroad, and slighted at home. For the bravest men by ill success are lost in common opinion: or, to speak in a higher strain, where God doth not bless, man will not. The King thus almost annihilated, catches hold of *Rome*, fawns on the Clergy, passes to them the Ordinances of *Articuli Cleri*, and *de prisis bonis Cleri*: which lost the Free-men no right, although it concluded the Crown. And to cares the Commons made the Statute *de Vice-comitibus*, and the City of *London* likewise by the Statute *de Gavelletto*. But God saw all sorts of men run at riot, and sends in upon the Nation, Plague, Famine, and other extraordinary testimonies of his displeasure, even to the wonderment of other Nations; and this brought a kind of sobriety into affairs, made all sorts tame, and for the present only prepared them for better times. For the King's time of longing again is come, and he must have new play-fellows; finds the *Spencers* or rather was found of them; they grow in honour almost beyond the reach of the Nobles, but not beyond their envy; and are more secure than *Gaveston* in this, that in their first sprouting, the King's Council served himself and them to keep in with the Com-

mons by making good Laws; such as the Statutes at *York*, of Essoyns; Attaints of Jurors, Levying of Fines, and Estreats into the Exchequer, *&c.* all of them promising good government. The Barons nevertheless liked not the *Spencers* greatness, and being by several occasions exasperated, joyn in one, and occasion a new War: the King aided by the Commons (who yet thought better of the King than of the Barons, whom they saw prejudiced rather out of self-apprehensions, than the publick good) prevailed against the Barons, and made them the first president of death upon the Scaffold.

Now the *Spencers* are Lords alone, thinking themselves above reach of the once formidable Barons, and the Commons too inferiour for their respect. Thus lifted up they take a flight like that of *Icarus*. They had so much of the King's heart, as they could not spare any part thereof to the Queen, and she being as loth to spare so much for them as they had, retired with the Prince to a relief which they brought from beyond Sea, and with whom both Lords and Commons joyn. The favourites missing of their wonted wings, come down faster than they ascended, and together with them the King himself, all of them irrecoverably. Thus favourites instead of Cement between Prince and people, becoming rocks of offence, bring ruine sometimes to all, but always to themselves.

The King foresaw the storm, and thought it safest first to cry truce with the people, and come to agreement with them by common consent, for the extent of his prerogative in certain particular cases questionable; and this summed up, become a Statute for future times to be a *ne plus ultra* between the King and people. The like agreement likewise was concerning services of Tenants to their Lords; and an oath framed to vindicate them from all encroachments. And something was done to calm the Clergy for the demolishing of the Templar-Knights, but the wound was incurable, words are not believed if actions do not succeed; nor will oaths now made to bind Kings, Bishops, Counsellors of State, Sheriffs, Mayors, Bailiffs, or Judges

Prerog. Reg. 17 *Edw.* 2.

Stat. de Homag.

Stat. Templar.

to

to Juſtice; nor directions for regulating of Courts, nor Ordinances againſt falſe moneys and weights, nor all of them ſettle the people; but they adhere to the Queen, burning with jealouſie againſt the King, and both her ſelf and the Lords with rage againſt the *Spencers*. The King flies, and being forſaken of the people, the Lords, the Clergy, his own Son, and the Wife of his own boſom, and of God himſelf, as the moſt abſolute abject that ever ſwayed Scepter, loſt the ſame; and being made a monument of God's revenge upon inordinate deſires in a King, and of the Engliſh people, being enraged, not long ſurviving his demiſe, he died a death meet to be for ever blotted out of the thoughts of all ſubjects, but to be had in everlaſting remembrance of all Kings. For if a Kingdom or Parliament miſleads the King, at the worſt he is but miſled by his Council: but if he be drawn aſide by favourites, he muſt thank his own luſt: in the one he hath but the leaſt ſhare in the burthen, in the other he muſt bear the whole.

CHAP. LXV.

Of the condition of the Nobility of England, *till the time of* Edward *the third.*

NOw was prerogative mounted up to the higheſt pitch, or endeavoured ſo to be; either through the weakneſs or power of theſe Kings, of whom the firſt and laſt had little to ground upon but their own will; and the other, I mean *Edward* the firſt, had more wiſdom and power, but was otherways diſtracted by foraign and more urgent employments; ſo as the work fainted before it came to it's full period. The conteſt was between the King and Barons, who till thoſe days were rather the great and richer ſort of men, than Peers, although they alſo were of the number. I am not ſo ſharp ſighted as to reach the utmoſt intentions of the Lords: but their

their pretences are of such publick nature, as it's plain that if their private interest was wrapped up therein, they were inseparable: And I shall never quarrel the Lords aim at private respects, when as its plain the publick was so importantly concerned; and yet I will not justifie all that I find written concerning their Words and Actions. The speech of the E. of *Cornwall* to his elder brother, and King *Henry* the third, *I will neither render up my Castle, nor depart the Kingdom, but by the judgment of the Peers:* and of *Simon* the E. of *Leicester* to the same King, *that he lyed, and were he not a King the Earl would make him repent his word*: and of the Lords, that *they would drive the King out of his Kingdom, and elect another:* and of the E. Marshal to *Edward* the first, that *he would neither go into Gascoine nor hang*; and such other do savour of passion (especially that of the E. of *Leicester* and the Lords) and may seem harsh and unmannerly; and yet may admit of some allay, if the general rudeness of the time, the Kings injurious provocations, and the passions of cholerick men be weighed together: Yet will not all these trench upon the cause, nor render the state of the Lords too high, or disproportionable to their place in the policy of the Kingdom of *England*, as things then stood, I say, it was not disproportionable; for where the degree of a King was mounting up to such a pitch as to be above law, the Lords exceeded not their places in pressing him with their counsels to conform to the laws; and in maintaining that trust that was reposed in them in keeping off such sinister counsels and invasions as might violate the laws and liberties, or hinder the current of justice; concerning which I shall shortly state the case, and leave it to the censure of others. The government of the people of this Nation in their original was Democratical mixt with an Aristocracy (if any credit be to be given to that little light of History that is left unto us from those ancient times.) Afterwards when they swarmed from their hive in foreign parts, and came over hither, they came in a warlike manner, under one conducter, whom they called a King; whose power, whatever in the war, yet in time of peace was not of that heigth as to rule alone; I mean that

M. Paris. An. 1227.

whereas

whereas the Lords formerly had the principal executory power of laws ſettled in them, they never were abſolutely deveſted of that power by the acceſs of a King; nor was the King ever poſſeſſed of all that power, nor was it ever given to him; but the Lords did ever hold that power, the King concurring with them; and in caſe the King would not concurr, the people generally ſided with the Lords, and ſo in concluſion the King ſuffered in the quarrel. From this ground did ariſe from time to time the wanderings of the people in electing and depoſing their Kings during the Saxon times. Nor did nor could the Norman *Williams* ſhake off this co-partnerſhip, but were many times, as well as other enſuing Princes, perſwaded againſt their own minds and plotted deſires. Nor can it otherways be ſuppoſed where Councils are ſettled; for whereto ſerve they, if (notwithſtanding them) the King may go the way of his inordinate deſire? If the Lords then did appear againſt theſe Kings whereof we treat, in caſes where they appeared againſt the laws and liberties of the people; it was neither new, nor ſo heinous as its noiſed, for them who are equally, if not more entruſted with the Common-wealth, than the King (by how much the Counſellors are truſted more than the Counſelled) to be true, for the maintenance of their truſt in caſe the King ſhall deſert his. But the greater queſtion is concerning the manner by threats and war. Its as probable, I grant, that the Lords uſed the one as the other, for it was the common vice of the times to be rugged; yet if we ſhall add to what hath been already ſaid, firſt, that Knight-ſervice was for the defence of the Kingdom principally. Secondly, that the greateſt power of Knight-ſervice reſted with the Lords, not only in propriety and ownerſhip, but in point of direction for the benefit of the Commonwealth; and laſtly, that the ſtate of the times now was ſuch as the Kingdom was oppreſſed by ſtrangers Counſels, and the Counſels of the Kingdom rejected; that inſtead of law, Gariſons of ſtrangers ruled; that no man could own his own, that the ſubjects were looked upon as enemies; and of all this the King made the principal inſtrument, who had ruled and over-ruled in this

manner

manner, and so was resolved to continue; I shall leave it to the better judgement of others what other healing plaister was to be had for such a sore. Albeit it cannot be denyed, that more due respects might have been tendred to Kingly dignity than was in those times practised: And yet there was a difference also in the occasions of War, for certainly that last War with *Edward* the second was more fatal, and yet less warrantable; and in the issue declared that there was more of the Queen therein than of the Lords, who knew a way of removing favourites from the King, without removing the King from the Kingdom, or driving him out of the World. In all which nevertheless it cannot be concluded that the Lords party was encreased more than in the former Kings times; for the loss of the field in *Henry* the thirds time against the Prince, kept them in awe all the succeeding reign (although they were not then tongue-tyed) and their second loss against *Edward* the second, which was yet more sharp, questionless quelled their spirits (although they lost no right thereby) and encreased the King's party much by the access to the Crown of the services of such as held of those Lords that were attainted or disinherited: And yet by a hidden providence the King was little the better when it came to the pinch; for when *Edward* the second's Queen came from beyond the Seas, though with but a small force, all forsake the King; neither regarding the former terrour of the Army of a King, nor the right or service, nor oath of fealty, nor promises, nor Laws, nor other engagements; and so the King becomes a prey to an enraged woman, or which is worse to a jealous Wife: so little can the name of a King do, when his person is despised; and so vain for him to trust in his Militia, that hath already disarmed himself of the hearts of his Subjects. The sum then of all the labours of the Nobles during these times will rest in this, that they won the day, and yet lost the field: although they lost their own bloods and estates, yet they saved all to the people, and left Laws in force, able to debate with prerogative in the hand of any King that should succeed. Thus stood the matter in fact upon such grounds as it had, the validity whereof it's not my work

to

to censure neither by the ballance of Law or Gospel, but leave it as a sore time, that scarce will endure touch; nor bear a King further then he was good or brave.

CHAP. LXVI.

Of the state of the English Clergy until the time of Edward *the third: and herein concerning the Statute of* Circumspecte agatis, Articuli Cleri, *and of general Councils and National Synods.*

IT was a time of much action throughout the whole Christian State; and *Rome* now having attained to it's full glory, began to be eyed on all parts, as an irregular motion crossing all affairs, that it may like the sole Empress command all, and be controlled by none; and this wrought some stirrings in *France*, complainings in *England*, and facing between the Emperour and the Pope. How chargeable this was to the Pope's Treasury it's not material, but it occasioned or was pretended to be the occasion of all the intolerable exactions ensuing; there being scarce one year passed over without some extraordinary exaction levyed upon the Church-men, either by provisors, tenths, procurations, levies for the Holy War, Quindizmes, benevolences, or other such like; and where money was not to be had, by levies of Ornaments, or of rich apparel; by intimation, begging, perswading, commanding, threatning, and in this course continuing till they had outfaced shame it self, and that the whole Law of *Rome* became comprehended in this one, *Quicquid libet licet.* In general therefore the Church of *Rome* cannot be said to thrive during these extorting times, although *Rome* did; for if the Laity were pillaged by the King, the Clergy much more both by Pope and King: if the one complained, the other cryed; the one sometimes found relief from the King, but the other was helpless, for the Pope had no ears to hear, nor the King hands *M. Paris.* *M. Paris.* 720.

to help; he neither durſt nor would croſs the Pope, although the Clergy told him that by theſe exactions they were impoveriſhed in ſuch manner as they were diſabled to do him ſervice for their Lay-fees. Thus *Rome* becomes a burthen to *Rome*, and the members weary of bearing their head. Hereafter muſt the Pope beware of falling out with Kings, for the Engliſh Clergy now, though late, ſee that all is not Gold that gliſters; nor is it any great privilege to be the Pope's men further than the Pope will be a good maſter, but this was not to be expected; Popes were grown ſo excellent, as they could not amend: and *England* ſo enamoured of them, as it's become their *verè hortus deliciarum*, as the Pope called it, when he ſaw the rich veſtments of the Engliſh Church-men: And therefore they muſt now be contented to be the Pope's viands as often as his hungry maw doth call, or otherwiſe they muſt fall out. An excellent poſture of affairs, and brave preparative to diſpoſe the hearts of all ſorts for entertainment of the eaſie yoke of Chriſt's government, which was now at the door, and ready to be revealed. Nevertheleſs, poor and mean as the Clergy was, they had courage enough not only to ſtickle both with King and people for their own liberties, but alſo to invade the liberties both of the Crown and Commons, having this advantage, that they had to do with a King and people that were two; and themſelves well ſeconded by the Pope, that had no leſs power in thoſe times of publick diſtraction, and was bound to ſerve the Cattel well that yeilded him ſo much milk. The particular matters of debate may appear in their paper of grievances compoſed in *Henry* the third's time, and their reſolutions thereupon; their complaints were renewed again in the time of *Edward* the firſt (if we may give credit to *Baronius*) after the Statute of *circumſpectè agatis*. To the end therefore that the whole may lie before us. I ſhall ſet down the matter or ſubſtance of both theſe papers ſeverally in regard they ſound much alike, and note the difference; all which I ſhall do to the end that it may more plainly appear what the Church-mens Idea was, and how far the common Law and King's prerogative would agree thereto.

M. Paris.

M Paris. An. 1257. *Vid. Addit. Baronius. Annal.* 1306.

The

The complaints are of this nature.

1. That the Church-poſſeſſions in their vacancies are waſted, and that Eſcheators do not only ſeiſe the perſonal eſtate of the Abbot or Prior deceaſed, but ſuch Corn in the Barn, and other goods belonging to the houſes, for their maintenance; as alſo the profits of Churches impropriate. 2.

3, & 4, & 5. Elections are either diſturbed by the King's Letters preceding, or by delay of the Royal aſſent ſubſequent to the ſaid elections.

6. The Lay-power without the advice of the Clergy do put in, eject, or reſtore incumbents to Benefices void.

7. Prelates are ſummoned to anſwer to the Lay-power in the Writs *Quare excommunicavit*, and *Quare non admiſit.*

8. Clerks are diſtrained in their Lay-fees, to anſwer before the Lay-power in Action of Debts, Treſpaſs, or other perſonal Actions; and in caſe they have no Lay-fees, the Ordinary is diſtrained by his Barony to cauſe the Clerk to appear.

9. The Laity are forbidden to take oath, or to inform upon oath before the Prelates, and to obey the Prelates commands in ſuch caſes.

10. Perſons taken and impriſoned upon excommunication are ordinarily diſmiſt without ſatisfaction to the Prelate; and ſometimes are not taken by the Sheriff, notwithſtanding the King's Writ; and as well the King as his Officers do ordinarily communicate with ſuch as are excommunicated, and likewiſe command others to communicate with them. 11. 12. & 33. 13.

14. Clerks impriſoned for Felony are refuſed to be delivered to the Ordinary, unleſs upon ſecurity to appear befor the Juſtices in *Oyer*, and ſometimes are hanged before their Ordinary can demand them; and ſometimes their heads are all ſhaven that they may not appear to be Clerks. 15.

16. Juſtices *itinerant* do impriſon Clerks defamed for Felony, or otherwiſe out-law them if they do not appear. And otherwiſe proceed againſt Clerks after their purgation before the Ordinary. 17.

18. The Lay-power ſeiſes upon the eſtates of Clerks degraded for crimes.

19. Clergy are compelled to answer and give satisfaction for
20. offences against the Forest-Laws before the Lay-power: And
21. in case of default, the Bishop by distress is compelled to order satisfaction, as well in such cases, as in personal Actions.

22. Privileges of Sanctuary are invaded by force.

23. Executors of Bishops are hindred from administring the estate without license first obtained from the King.

24. The King's Tenants goods are seised after their decease by the King's Bayliffs.

25. Intestates goods are seised by their Lords, and their Ordinary hindred from administration.

26. The King's prohibition passeth in case of Tythes and Chappels.

27. The like in cases of troth-plight, perjury, cerage, heriet, or other Church-duties, as money for reparations of Churches,
28. and fences in Church-yards, pecuniary punishment for Adul-
40. tery, and costs of suit in Ecclesiastical court, sacrilege, excom-
29. munication for breach of the liberties of the Church, contrary to the grand Charter.

30. In cases of prohibition if the Ecclesiastical Judge proceed contrary to the same, he is attached and compelled to shew his Acts in Court; if the Lay Judge determine the cause to be Temporal, the Ecclesiastical Judge is amerced, if he proceed against the prohibition, and it's tryed by witnesses of two ribaulds: and in case it be found for the Ecclesiastical Judges
31. cognisance, yet there is no costs allowed for such vexation.

32. That Jews in matters Ecclesiastical aforesaid are by the King's prohibition drawn from the Ecclesiastical Judge unto the Lay-Magistrate.

34. Question about Lands given in Frankalmoin, are tryed
35. in the Lay-Courts; and by reason of such Tenure, the owners
36. though Clergy-men, are compelled to do suit at the Lay-
37. Courts, and are charged with impositions, and are distrained
38. hereunto, although the Lord have other Land of the Donor in Frankalmoin subject to his distress.

39. Prelates summoned to higher Courts, are not allowed to make attorneys to appear for them in the inferiour civil Courts.

41. Grantees

41. Grantees of murage, or other unwonted impositions compel the Church-men to pay the same.

42, & 43. The Clergy are charged with Quarter, Cart-service, and purveying.

44. The Chancery sendeth out new Writs contrary to the liberties of the Church, and the Law of the Land, without the assent of the Council of the Kingdom, Princes and Prelates.

45. The King doth compel the Clergy to benevolences to the King at his voyage into Foraign parts.

46. Amercements granted to Clergy-men are turned into fines by the Justices, and by them taken.

47. Clergy-men are fined for want of appearance before the Justices *itinerant*, and of the Forest upon common summons.

48. *Quo warrantoes* granted against the Clergy for their liberties, and the same seised, unless they be set down in express words in their Charter, notwithstanding that by long custom they have enjoyed the same, and many times contrary to express grant. 49. 50.

This is the sum of their paper of grievances; and because they found the King either wilful or unconstant, they resolve upon a remedy of their own, by excommunication and interdiction, not sparing the persons of any principal or accessory, nor their Lands, no not of the King himself; and for this they joyn all as one man: Now what scare this made I know not, but *Henry* the third in the Stat. of *Marlb.* and *Edward* the first in his Stat. at *Westminster*, and other Statutes: the first spake fair, and seemed to redress some of these complaints: as also did *Edward* the second, and yet the Common Law lost little ground thereby.

That which *Henry* the third did besides his promises of reforming, was done in the Stat. of *Marlbridge.*

The successors of Abbots, Priors, and Prelates, &c. *shall have an Action of Trespas for Trespasses done nigh before the death of their Predecessors, upon the estates of their* *Marlbr. c. 29.*

their Corporations. And shall prosecute an Action begun by their Predecessors. And also shall have an Assize against intruders into any of the possessions belonging to the said Corporations whereof their Predecessors died seised.

This might seem a remedy provided against the first malady complained of, and questionless bound all but the King; and so might perchance abate somewhat the edge of that Article. But it being the Clergies reach to grow rich, and the Pope's cunning to help on that work, that they might be as stores for supply of his Treasury; and had forbidden Abbots and other Prelates, &c. the liberty of disposing their estates by last Will. Kings therefore as supreme patrons to these bodies in their vacancies used to seise all the Estates of the Prelates, with the Temporalties to their own use, as well to preserve the riches of the Kingdom to it self, and the possessions of such Corporations from spoil, as to be a cloke of their own covetousnes. And under the Estates of the Prelates, or heads of these Corporations, all the Goods and Chattels belonging to the said Corporations were comprehended, in regard that all was by Law adjudged to be in the sole possession of such head, and without whom all the rest were accounted but as dead persons.

Fits. Abbe. 25

Marlbr. c. 10. *No Clergy-man is bound to attend at the Sheriff's Turn.*

William the Conquerour first exempted the persons of the Clergy from attendance upon Temporal Courts; yet they were still urged thereto, and especially by a Law in *Henry* the first's time; but by this Law they are discharged, and in some measure a provision made against the grievance in the 39*th.* Article before-mentioned. These amends we find made to the Clergy by *Henry* the third, besides his confirming the grand Charter: And his Son *Edward* the first pursued the same course, especially in his first times, when he was but tenderly rooted: as may appear in the Statute of *West.* 1.

Gloss. p. 428. Ll. Hen. 1. c. 31

Clergy-

Clergy-men nor their Houſes ſhall be charged with Quarter, nor their Goods with purveyance or Cart-ſervice, under peril of impriſonment and damages by action or impriſonment. *Weſt. 1. cap. 1.*

The great endowments of Lands, Rents, and Revenues given to the Church-men by the Laity was for the maintenance of Hoſpitality and works of Charity. The founders and benefactors hereby obtained a right of corody or entertainment at ſuch places, in nature of free quarter, which in the neceſſitous times of *Henry* the third became ſo common, that every one that had power never queſtioned right, and the King above all the reſt; by means whereof the Church Revenues were exceedingly waſted: for remedy whereof all offenders are by this Statute made liable to fine and impriſonment, and double damages in caſe of Action of Treſpaſs; the King only excepted, againſt whom they had no defence, but would rather have won him to have been their defence againſt the exactions from *Rome* that continually plagued them.

A Clerk taken upon Felony, being demanded, ſhall be delivered to the Ordinary; but being indicted, ſhall not be diſmiſſed by the Ordinary without due purgation. *Weſt. 1. cap. 2.*

With due reſpects to the judgement of thoſe grave and honourable perſons of the Law, it ſeemeth to me that before the making hereof, the uſe was, that if a Clerk was defamed, or appealed by an offender for Felony, before conviction he was forthwith impriſoned; nor could he be delivered unto the Ordinary upon demand before inqueſt taken, unleſs upon ſufficient ſecurity to endure the Tryal before the Judges *itinerant*; which thing was not eaſie to be had for a Clerk, as times then were. This Law therefore was made in favour of the Clergy, who required that ſuch as were *Clerici noti & honeſti* ſhould forthwith upon their apprehending be ſent unto their Ordinary, and thoſe which were *vagi & incogniti* ſhould upon demand be delivered to be judged by their Ordinary freely, and *non expectatis Juſticiariis quibuſcunque*: Such wan- *Co. 2. inſtit. 164.* *Stamf. 130.* *M. Paris addit. fo. 200, 206, 207.*

dring

dring Clerks therefore the Clergy will have delivered before inquisition if demand be made: Nevertheless becauſe the Indictment paſſed many times before the demand came, (for by the 15. Article of the Clergies complaints foregoing, it appears that the Lay-Judge made more than ordinary ſpeed, for fear of ſtop.) This Law provided that ſuch alſo ſhould be delivered to their Ordinary, and that due purgation ſhould paſs before the party were delivered; and in caſe the Ordinary neglected his duty herein, he was liable to a fine or amercement. Thus is *Briton* to be underſtood in this point; whereas *Bracton* ſpeaking of ſuch as are convicted, affirmeth, that if demand be made of ſuch as are not indicted (for of ſuch he ſpeaketh) they ought to be delivered without indictment: I ſuppoſe he meaneth by the Church-Law, for till this Statute the Temporal Judges practice was otherwiſe, as appeareth by the 14. Article of the Clergies complaint foregoing; and ſo by this Law, the 14. and 15. Articles of the Clergies complaint are anſwered.

Briton. 4. fo. 11

Bracton, lib. 3. fo. 123.

Weſt. 1. c. 5.

Diſturbers of the Freedom of Elections fined.

With ſubmiſſion to the judgement of others, I ſuppoſe that this was framed principally for the ſatisfaction of the Clergies complaints in the third, fourth, and fifth Articles foregoing: and I am the rather reduced hereto, becauſe as touching elections into Temporal places of government, ſeveral Laws are eſpecially framed; ſuch as are elections of Sheriffs, and Coroners, whereof the one is *Weſt. 1. cap. 10.* the other *Artic. ſuper Cart. cap. 10.* and no Law is eſpecially made as touching the elections of the Clergy, if not this.

W. 2. c. 19.

Ordinaries having the Goods of the inteſtate ſhall anſwer his Debts.

Originally the goods of the inteſtate paſſed by a kind of deſcent to the children: afterward by a Saxon Law, the Wife had her part; and this continued all the Normans time. But now the ſtrength of the Canon-Law growing to it's full pitch, after a long chaſe attached the prey. In *Henry* the firſt's time they had gotten

gotten a taſte, for although the Wife and Children, or next of kin, had then the poſſeſſion, yet it was for the good of the ſoul of the deceaſed; and the Ordinary had a directing power therein, and ſo was in the nature of an Overſeer, and ſomewhat more. Afterwards in the time of King *John*, the Clergy had drawn blood: for though the poſſeſſion was as formerly, yet the dividend muſt be made in the view of the Church; and by this means the dividers were but meer inſtruments, and the right was vaniſhed into the clouds, or as the Lawyers term it in Abeyance. But in *Henry* the third's time the Clergy had not only gotten the game but gorged it: both right and poſſeſſion was now become theirs, and wrong done to none but the clouds. This was not well digeſted, before *Edward* the firſt recovered part of the morſel; and by this Law declared the uſe to be for the benefit of the deceaſed: and thus the one was ſatisfied in having what he uſed not, the other in uſing what he had not.

But theſe are but gleanings, the Law of *Circumſpectè agatis* brings in a Load at once: For the Clergy being vexed with the paſſing of the Stat. of *Mortmain* (whereof hereafter when we come to ſpeak of the Clergies loſſes) they make grievous complaints of wrongs done to their privileges; and after ſix years the King is at length won; and paſſed a writing ſomewhat like a grant of liberties, which before times were in controverſie: and this grant, if it may be ſo called, hath by continuance uſurped the name of a Statute; but in it's own nature is no other than a Writ directed to the Judges, in ſubſtance as followeth: *Antiq. Brit.* 194.

Take good heed that you do not puniſh the Biſhop of Norwich *and his Clergy, if they hold plea in Court Chriſtian of things meerly ſpiritual: for in ſuch caſes the Eccleſiaſtical Judge hath cogniſance, notwithſtanding the King's prohibition.* *Circumſpectè agatis.*

It's therefore neither grant nor releaſe, but as it were a covenant, that the Clergy ſhall hold peaceable poſſeſſion of what they had, upon this ground, that the King's prohibition hath

Circumſpectè agatis.

no place in ſuch things as are meerly ſpiritual. So as hereby the Clergy got a judgement againſt the Crown by confeſſion, and an eſtopel upon this maxim that ſpiritual things belong to ſpiritual men, into which rank the King's perſon cannot come; thus thought they, but what are ſpiritual cauſes, and why ſo called? are they ſuch as concern ſpiritual perſons, and things? this was the old way: mark, but if we bring into this Category, Adultery, Fornication, Inceſt, *&c.* we ſhall marr all. *Linwood* tells us that *mere ſpiritualia* are ſuch as are *ſine mixtura temporalium*: there may be ſomewhat in this, though I cannot find it; nor can I make out the ſence of the term any other way, but to limit it to ſuch things which by common cuſtom the Eccleſiaſtical Judge had cogniſance of: for otherwiſe neither King nor Law ever intended it to be expounded by the Canon, nor was it the intent of this Writ, Law, or Licenſe, (call it what you will) thus to conclude, as the particulars following will manifeſt.

Fornication, Adultery, and ſuch like, puniſhed ſometimes upon the body, and ſometimes upon the purſe.

Theſe crimes the Saxons puniſhed by the Temporal power, as I have already ſhewed. The Normans continued this courſe, if we may believe the Conquerour's Laws, which gave the fine in ſuch caſes to the Lord of the delinquent. And it is confeſſed, that *Henry* the firſt and the ſecond continued it (as the Clergies own complaint, juſt or unjuſt doth witneſs.) And what courſe was holden in the time of King *Steven* and *John*, is to me unknown, nor is it much to be regarded, ſeeing the latter did he cared not what, and the former to gain the good will of the Clergy regarded not what he did. The cuſtom therefore cannot be made good for the Clergy, much leſs to puniſh the bodies of Free-men in ſuch caſes, it being contrary to the grand Charter; never asked by the Clergy formerly, nor no complaint before now for denyal: for my part therefore I ſhall not apprehend it of a higher nature than the King's Writ, which in thoſe days went forth at random, if the 44*th.* Article of the Clergies complaints foregoing be true. It being ſo contrary

Ll. Gulielm. cap. 14, 19, 37[1].

M. Paris addit. fo. 201. *art.* 28.

trary to the common sence of Parliament to give the bodies of the Free-men to the will of the Clergy, to whom they would not submit their Free-holds. But the Writ proceeds in enumeration of particulars. *Circumspecte agatis.*

Reparations and adornings of Churches and Fences of Church-yards. Violence done to a Clerk, Defamation to reform, not to give damage. Perjury, oblations, payments of Tythes between Rector and Parishioner: Right of Tythes between two Rectors to a fourth part of the value: Mortuaries due by custom: A pension from a Rector to a Prelate or Advocate.

The most of which were under the power of a prohibition in the time of *Henry* the third, who was King but yesterday, as the Articles of complaint formerly set down do manifest. Nor had the Clergy ever better Title than connivance of some such favourites as King *Steven*, whose Acts may peradventure be urged against Kings, but not against the people, unless their own act can be produced to warrant it. The learning in the Princes case will (I suppose) admit of a difference: for it can never be made out, that the King's Council in Parliament was the *Magnum concilium Regni*, but only the House of Lords; and therefore whatever passed in Parliament by their only advice might bind the King, but could never reach the Commons nor their Liberties. And thus the grand Charter in the first conception was conclusive to the King but was not the act of the Parliament, because the Parliament cannot grant a Charter to it self of that which was originally custom. And therefore this Law, however countenanced, can never be concluded to be other than a permission; not only because it was never the Act of the Commons of *England*, but because it's contrary to the liberty of the Free-men; and it's beyond all imagination, that the Commons should out themselves from the protection of the Common Law, and yoke themselves, their Free-holds, and estates under the bondage of the Canons; nor ought such a construction to be admitted without expres words to warrant it. As for the conclusion, *Coke lib. 8.*

it is much worse, and not only dishonourable to the King in binding his Arms from protecting his Subjects by the Common Laws, and so in some respects making them Outlaws: but dishonourable to it self, whilst it makes prohibitions grounded upon Laws to be nullities by a late trick of *non obstante*, which was first taken up by the Pope, then by *Henry* the third, and by this King granted to the Clergy: and thus are all set at liberty from any rule but that of licentiousness. Nevertheless, this Law did thrive accordingly, for we find scarce any foot steps in Story of any regard had thereof till it became gray-headed; For it was not long e're the King stood in need of money, and was necessitated to try the good wills of the Clergy more than once: this occasioned them to be slow in answer, and in conclusion to deny that they should aid the King with any more money, *Papa inconsulto.* The King hereupon disavows the Clergy, and leaves them to the Romish oppressions, which were many; and then the Clergy rub up all old sores, and exhibit their complaints to their holy Father, to this effect:

Antiq. Brit. vit. Winchelsy.

Baronius Annal. An. 1306

1. *That the King's Justices intermeddle in Testamentary causes, accounts of Executors, and cognisance of Tythes, especially to the fourth part of the Living.*

2. *That the Clergy were charged to the King's carriages. That the King's Mills were discharged from paying of Tythes. That Clerks attending on the Exchequer, were necessitated to non-residency. And that after their decease, their goods were seised till their accounts were made. That Ecclesiastical possessions were wasted during vacancies.*

3. *That Clerks were admitted to free Chappels by Lay-men.*

4. *That the King's Justices took cognisance of Usury, Defamation, violence done to Clerks, Sacrilege, Oblations, Fences of the Church-yards and Mortuaries.*

5. *That prohibitions are granted without surmise.*

6. *That Clerks are called to answer in the King's Court for crimes, and being acquitted, the informers escape without penalty.*

7. *That Clerks are not allowed their Clergy.*

8. *That*

8. *That after purgation made, Clerks are questioned in the King's Court for the same offence.*

9. *That persons in Sanctuary are therein besieged.*

10. *That the Writ* de Cautione admittenda *issueth forth, although the Church be not satisfied, and excommunicate persons being imprisoned, are enlarged in like manner.*

11. *That Debts between Clerks due, are determined in the temporal Courts.*

12. *That Bishops are compelled by Distress to cause Clerks to appear in Lay-Courts without cause.*

13. *That the Church loseth it's right by the ceasing of Rent or pension by the space of two years.*

14. *That Nuns are compelled to sue in the Lay-Courts for their right in possessions, befalling by decease of their kinred.*

15. *That Churches are deprived of their privileges till they shew* Quo warranto *they hold them.*

16. *That Ecclesiastical Judges are stopped in their proceedings by Sheriffs and great men.*

17. *That Bishops refusal of Clerks presented are examined in the Lay-Courts.*

18. *That Patrons of Religious Houses, do oppress them by extreme Quarter.*

19. *That Bigamy and Bastardy are tryed in Lay-Courts.*

20. *That the King suffers his Livings to be vacant for many years.*

21. *That the Clergy are wronged by the Statute of Mortmain.*

Here's all, and more than all that's true; and more than enough, to let the Reader see that the Writ *Circumspecte agatis*, was but a face put on for the present, after laid aside, and the Clergy left to the bare Canon. They likewise shew what the Clergy aimed at: and in that they did not obtain was to be attributed to the resolution of the Laity, and not to any neglect in themselves; for the Arch-Bishop died in the service, and *Antiq B. it.* it's thought that grief for these matters was no little cause thereof. But the times within a while grew troublesome, and the King in pursuit of the French Wars, being unadvised in his

Articuli Cleri.

in his way angred the people by his arbitrary levies of men and money, as it brought forth a State-scoul, little inferiour to a quarrel. And to pacifie the Clergy, he granted them the Writ *de consultatione habenda* in all matrimonial and testamentary cases, which were of their least doubted privileges; and this qualified the first Article of complaint next foregoing, if such cause they had of complaint; and this was all that the Clergy got at *Edward* the first's hands. *Edward* the second was a man that was neither well affected to *Rome*, nor weak in spirit, and yet so unhappy that his way neither promised good success, nor ever had it; and so he became a servant unto the humours of his servants, to keep his head above water; but especially after he was chased by the Scots, and quite out of breath, he calls for help of all, but first of the Clergy, and bespeaks them with the Ordinance of *Articuli Cleri*; wherein he gives some satisfaction to the complaints formerly mentioned, which it seems by *Baronius*, were exhibited in Parliament.

Stat de consultat. 13 *Ed.* 1.

Ecclesiastical cognisance extendeth unto Tythes, Oblations, and Mortuaries, and to pecuniary recompence.

cap. 1.

In the first times neglect or denyal of Church-duties, was punished in the King's Court by fine. Afterwards the Bishop was joyned in that work, and the Tythable goods were seised; eight parts whereof were taken to the Lords and the Bishops use by moyeties; a ninth part left to the owner, and the tenth to the Church; nor had the Bishops any peculiar Courts of cognisance of causes till the times of the Normans; nor as yet in those times had they power to all intents; for though it be true, that the Roman Tribute of *Peter*-pence was allowed by the Conquerour's Law to the Bishop's Court, yet we find no Law for Tythes and other profits to be recovered by the Ecclesiastical Court till about the end of *Henry* the second's Reign, or King *Steven's* time; for at a Council at *London* in *Henry* the second's time it was ordained, that three summons in the Pope's name should be made to such as payed not their Tythes, and in case they then refused, they should be *Anathema*: and after that time in a Council at *Oxford* under *Steven* Arch-Bishop of *Canterbury*

Ll. Alfred. c. 9.
Ll. Edw. c. 6.
Ll. Canut. c. 8.

Ll. Gul. 20. c.
Spicileg. 180.

Binius Tom. 7. f. 661.
An. 1173.

terbury it was decreed that the Laity ſhould be entreated firſt to pay their Tythes, and then if neceſſity require, that they ſhould be compelled by Eccleſiaſtical cenſure: ſo as their power crept up by degrees in recovering of Church-duties, as it did in Teſtamentary matters; and at length *Henry* the third worn and ſpent with the Barons Wars, about his latter end yeilded to *Boniface* the Arch-Biſhop his importunate demands, and firſt gave liberty to the Clergy to be their own Judges; and yet the Lay-Judges, although divers of them were Clergymen did not ſuddenly forbear till this Law came, which gave ſome ſatisfaction to the firſt and fourth Articles of complaint foregoing. *Articuli Cleri.* *Baronius Annal.* 1222. *cap.* 19.

Eccleſiaſtical cogniſance extendeth not to a fourth part of the Tythes of any Living, nor to pecuniary mulcts for ſin, ſaving by way of commutation. *cap.* 2.

The complaint of the Clergy in *Henry* the third's time was againſt the King's prohibition in caſe of Tythes indefinitely; for in thoſe times, and afterwards in *Edw.* the firſt's time, the King's Court had the cogniſance of all Tythes, and therefore in the Statute of *Weſt.* 2. *c.* 5. the Writ of *Indicavit* was allowed in caſe of right of any portion of Tythes; yet the Church ſtill gained ground, and about, or before the death of *Edward* the firſt, the Temporal Judge had yeilded unto the Clergy the cogniſance of a portion of Tythes under the value of the fourth part, (for in the Article next foregoing the Clergies complaint was, that the King's Juſtices held cogniſance of the fourth part) and here they were confined thereto by this Law, which the Clergy could never remove. *Artic.* 1.

For violence done to Clerks, the offender ſhall render damage in the King's Court, but Excommunication, Penance, and Commutation ſhall be in the Biſhops Court. *cap.* 3.

The Canon-Law had an ancient claim to the Protection of Clerks, both as touching their perſons and eſtates; and prevailed ſo far, as they were thereby emboldned to offer violence unto others. But as I formerly ſhewed, by a Law in *Henry* the ſecond's time, the Temporal Judge reſumed his original power *p.* 185.

Articuli Cleri.

power; and this became a ſore evil between the Clergy and Laity, for though it were allowed that Clerks ſhould not be ſued but before the Eccleſiaſtical Judge in ſuch caſes, yet it was no warrant for the Laity likewiſe to be called before the Eccleſiaſtical Judge in ſuch caſes; and therefore the Clergies complaints ſhew that the matter was doubtful, and that the Lay-Judge generally maintained his jurisdiction, although ſometimes he diſclaimed it, as it may appear in the caſe of a Treſpaſs in the nature of a riot committed upon the priory of St. *John's* of *Jeruſalem* in the ſeventh year of *Henry* the third, when as it was adjudged *per curiam*, that it belonged to the Eccleſiaſtical Court to puniſh: But in *Edward* the firſt's time, by the Ordinance of *Circumſpecte agatis*, and Articles concerning prohibitions; the difference was made between damages and *pro reformatione*, and the ſame affirmed by this Law, and ſo the matter ſettled, and the fourth Article of the Clergies complaint in ſome meaſure ſatisfied.

Fits. Harb. 7 Hen. 3. prohibition 30.

cap. 4. *Defamation within cogniſance of the Eccleſiaſtical Court, and corporal penance therefore, and Commutation.*

The words are general and peremptory with a *non obſtante* the King's prohibition, and yet the Law afterwards reſtrained the ſence to defamation for crimes or offences triable in the Eccleſiaſtical Court: and this gave further ſatisfaction to the fourth Article of the Clergies complaint foregoing.

cap. 5. *Tythes of new Mills may be recovered in the Eccleſiaſtical Courts.*

This Tythe of Mills was a new encroached Tythe never mentioned in any former Law of this Kingdom, nor demanded by the Synod at *London*, *Anno* 1173. which mentions Fruit-Trees, young broods of living creatures that are tame, Herbage, Butter, Cheeſe, with other particulars, but mentions not new Mills. It's true, that anciently Mills paid Tythes, but ſuch they were, which were ancient, and had paid the ſame by cuſtom; and ſuch as by Law in the Confeſſor's time were declared to be given

Bineus Tom. 7. 661. *Ll. E. c.* 8 & 9.

given *a Rege Baronibus & populo.* But by the second Article of the Clergies complaint next foregoing, it appears that the King's Mills refused to pay this Tythe; now whether the new Mills were called the King's Mills, as being made upon the publick streams by the King's license; or whether the Mills newly made within the Demesnes of the Crown it's not to be insisted upon; but it's evident, that till this Law made, the new Mills would not Tythe their labours. *Articuli Cleri.*

One and the same matter may be tryed at the Common Law, after Sentence in the Spiritual-Court, in divers respects. *cap. 6.*

The great sore that was complained of, was that the Clergy after purgation in the Ecclesiastical Court made, were proceeded against in the King's Court in case of breach of peace, or Felony, as may appear out of the *16th.* Article of the Clergies first complaints, and the *8th.* Article of that taken out of *Baronius.* Nevertheless, the present Law subjoyns an example of the questioning a Lay-man in the Ecclesiastical Court, in case of violence done to a Clerk, as a matter which may be tryed in the Ecclesiastical Court, and yet reviewed by the King's Court.

The Writ de Excommunicato deliberando *shall not issue forth, but upon evident breach of the King's liberty.* *cap. 7.*

This might be intended in satisfaction of the tenth Article of the Clergies complaint in *Baronius*, and the tenth Article in the Clergies complaint first recited; although that complaint both in the 10, 11, 12, and 33. Articles, seem to be but clamour upon Officers, and not the King's Court of Justice.

Clerks Officers to the Exchequer are to be corrected by their Ordinaries; and yet not tyed to residence during their attendance on the Exchequer. *cap. 8.*

This is in part an answer to the second Article of the Clergies last complaint, and a justification thereof as a thing that is *pro bono publico.*

Articuli Cleri. *cap.* 9. *Clergy-mens goods shall not be distrained either in the High way, or Sanctuary-grounds, unless such as have been of late purchase.*

The complaint exhibited in *Henry* the third's time, and the 8*th.* Article was only in ordinary personal Actions; but in the complaint made in *Edward* the second's time, Article 12. is, that it's without cause that they are so distrained. This Law yeildeth them somewhat, *viz.* immunity from distress within their ancient possessions, which had been by ancient custom privileged, but yields nothing as touching their latter purchased Lands, because they had no such custom.

cap. 10. *High-ways and Sanctuaries shall be free for such as abjure, so as they shall neither be restrained from liberty, nor necessaries kept from them. Felons may make free confession to the Priest without danger.*

The grievance in the 22*th.* Article of the Clergies complaint in *Henry* the third's time, and the ninth in that of the times of *Edw.* 2. are hereby relieved; provided that the delinquent keeps himself in due order.

cap. 11. *Houses of Religion shall not be oppressed with corodies, pensions, or entertainments of great men.*

This answered the grievance in the 42. and 43. of the first complaint, and the 18*th.* of the latter, and in effect little other than what was formerly settled by *West.* 1. *cap.* 1.

cap. 12. *The King's Tenant may be cited before the Ordinary out of their own Town, and if Excommunicated for want of appearance, the Writ* de excommunicato capiendo *shall be awarded.*

A remedy this was against the grievances in the 12*th.* and 33*d.* Articles of the first complaint, and in the 10*th.* Article of the last scedule of complaints. And thus the Clergy have gotten the day of the King's Tenants, which they had been striving for ever since the conquest, as may appear by what hath been formerly

formerly said; and now the King's Tenants are in no better condition than other men, *viz.* they may now be excommunicated without the King's license: nor is the answer *Nunquam fuit negatum* to be referred to the point of Excommunication; for that power was denyed them but unto the citing them out of their own Parish, which cannot be found to be denyed to the Clergy, by any thing that yet appeareth. *Articuli Cleri.*

A Clerk presented and found unable by the Ordinary, shall be tryed again by the Ecclesiastical, and not the Lay-Judge. cap. 13.

Although the fitness or sufficiency of the party presented, is to be examined by the Ordinary, yet the civil Magistrate hath power in action brought to enquire and determine whether the Ordinaries work was rightly done, and so the 17*th.* Article of the last complaint answered.

Elections shall be free. cap. 14.

The Law was of the same with this in the Stat. *W.* 1. *cap.* 5. which see before; and it may be that the iniquity of the times continued notwithstanding, and so occasioned the renewing of this Law.

A Clerk having taken Sanctuary shall not be compelled to abjure. cap 15.

Nor after confession of the crime, or appealing others before the secular Judge shall be denyed his Clergy. cap. 16.

Although the Temporal Courts proceeded not so far as to pass sentence against a Clerk that had taken Sanctuary; yet they proceeded to enquiry, as may appear by what was said formerly concerning the Stat. *West.* 1. *cap.* 2. and therefore though this Law in the 15*th. Chap.* alloweth that a Clerk in Sanctuary, shall enjoy his Ecclesiastical liberty, yet the words *legi Regni se reddens* are interposed; and the reason is because the King upon indictment found, had right to the delinquents goods and profits of his Lands, until due purgation, and then his Lands were by a Writ out of the Chancery to be restored to 7 *E.* 2. *Fitz. tit. Prefaitures* 34.

him again; nor could any purgation regularly pass before the party was indicted.

Stat. de asport. relig. 35 E. 1. *No religious House shall be charged with Tax to any superiour without the Realm of* England; *nor shall send to any visitation out of* England.

This was neither at the request of the Clergy nor act of kindness intended unto them, but for the good of the Kingdom, to prevent the bleeding of the Treasure of the Kingdom into Foraign parts.

Mag. Charta cap. 35. *Patrons of Abbies shall have their custody during their vacancies.*

This was the ancient Law, now revived by the Clergies consent and intended for the safeguard of the Revenues of the Houses, and their maintenance; and therefore it's with a *sicut superius dictum est*, cap. 5.

Stat. de prisis Edw. 2. *The Goods of the Clergy freed from purveyance, unless they will.*

It was a favour given by *Edw.* 2. to the Clergy to gain their good will after the death of *Gaveston*, the shameful defeat received in *Scotland*, and some particular testimonies of God's displeasure, whereof he began to be somewhat sensible.

Stat. de Quo Warranto. 18. Edw. 1. *Franchises holden by prescription or Charter confirmed, and Tryals by* Quo warranto *allowed to be in Eyer.*

It was the common share of the great men, but especially of the Clergy to have their Franchises exposed to the prey of the Eagles, or to such as hawked for them; and it's likely the King had not so easily forgone his prize, if all the fat had fall'n to his own share; but perceiving that more benefit came to his instruments than was meet, and himself little the better thereby; he sacrificed his Judges to the people, but it was to his own behoof, and so gained both credit and favour from the people, and profit to himself; and in some measure satisfied the 48, 49, 50. Articles of the Clergies complaint in the time

time of *Henry* the third, and the 15*th*. Article of their last complaint.

Lands or Tenements aliened to a Religious house shall escheat to the Lord, if the alienor take the same back to hold of that house. *Mag. cap.* 37.

The ground hereof principally was the prejudice done to the Lord by destruction of the Tenure, albeit that it had been an ancient grievance complained of in the Saxon times, that the Clergy were covetous, and swallowed down estates, and thereby weakned the Kingdom: But now they are become even cheaters, serving the turns of treacherous Tenants that would give their Lands by compact with the Church-men to receive them again from them to hold of the Church, which was a liberty that men thirsted after in those times wherein the Church-men were more adored than their Images. It seems this Law was made after *Bracton's* time, if that be true in the second Institutes: for he saith that a man may give his Lands to any one, whether Christian or Jew, or religious person, and nothing shall hinder it but the special reservation of the donor; and yet he saith that such gift or grant taketh not away the right of the Lord Paramount in his Tenure, albeit the gift be in free Alms. Nevertheless it seemeth to be such restraint: as the Templars and Hospitallers were fain to find out a new way, which was to protect mens Tenements from execution of Law by levying crosses thereon, albeit the right of the Lords was not barred; and therefore *Edw.* 1. provided a Law to make this also in nature of a Mortmain within the Statute made in the seventh year of his Reign, called the Statute *de Religiosis*; by which it was enacted, that in case of such alienations in Mortmain, the Lord should have liberty to enter; if he failed, then the Lord Paramount, or if he failed, the King should enter, and dispose of the same; and that no license of Mortmain should be sued out, but by the mean Lord's assent; and where part of the premises remain still in the Donor, and the original Writ mentioneth all the particulars. And thus at length was this issue for the present stayed, which hitherto

Bracton, lib. 1. *fo.* 13. *Coke* 2. *Instit. super Magna charta cap.* 36. *p.* 74. *&* 75. *Bracton, lib.* 2. *cap.* 10 *fo.* 27.

Stat. West. 2. *cap.* 33.

Stat. de Religiosis. 7 *E.* 1.

Stat. de Amortizandis terris. M. West. An. 1280. Mag. charta cap. 39.

thereto wasted the strength of the Kingdom, and by continual current emptying it into the *mare mortuum* of the Clergy consumed the maintenance of Knight-service, by converting the same to Clerk-service.

No Judge shall compel a Free-man to make Oath without the King's command.

Miror. Just. cap. 5. sec. 3.

So is the sence of the Law rendred by an ancient Authour; and I hope I shall not wrong the Text, if I affirm that the Ecclesiastical Judge was included within the equity, though properly he be not *Balivus*; for the Law intends to shew that it's a liberty that the Subject hath, not to be compelled to take Oath without the King's especial command: and by consequence it sheweth also that the King at that time, and until then had the directory of Oaths; for it was an ancient liberty given in the King's Charters unto such as they pleased, *viz.* to impose Oaths, and to punish for breach of Oath, and this passed under the word *Athæ* or *Athas*; and so *Edmund* the Saxon King gave to the Abby of *Glastenbury* amongst other *Athas & Ordulas*; and the Church-men that first procured vacations from suits of Law during holy times, procured a Law also to be settled by *Edward* the Saxon King, and *Gunthurne* the Dane, that Ordeal and Oaths should be forbidden upon the holy Feasts and lawful Fasts. And a wonder it is how it escaped the gripe of the Clergy so long, who catched at any thing that had but a glance of God's worship in it. And if this were the Subjects liberty, not to be compelled to swear, surely much more not to be compelled to accuse himself, unless by the Law he be especially bound; for it is *Glanvil's* rule, *Ob infamiam non solet juxta legem terræ aliquis per legem apparentem se purgare nisi prius convictus fuerit vel confessus in curia.* But the power of the Clergy now was grown strong, and they begin to remember themselves; and that Oaths are of a holy regard, and they men for holiness best able to judge when, and to whom they shall be ministred, and therefore now they begin to enter their claim, and to make a sure Title, they get a grant from Pope *Innocent* to *Steven Langton* Arch-Bishop of *Canterbury*

Malmsb. de gest. Reg. lib. 2.

Ll. Ed. cap. 9.

Fratton, lib. 3. cap. 7. fo. 106.

bury, of a faculty of licensing administration of Oaths during the time of Lent; and he accordingly enjoyed it during the mad time of *Henry* the third. But *Edward* the first quarrelled it, and left it questionable to *Edward* the second, who being in his condition as a lost man had less care of such smaller matters, and therefore allowed that his Judges of Assizes should be licensed by the Arch-Bishop to administer Oaths in their circuits in the sacred times of *Advent* and *Septuagessima*: and this course continued till *Henry* the eighth's time. The Clergy having thus gotten the bridle, gallop amain: they now call whom they will, and put them to their Oaths to accuse other men or themselves, or else they are excommunicated; *Henry* the third withstood this course, if the Clergy-mens complaints in the times of that King, Artic. 9. be true, and notwithstanding the same, the Law holds it's course, and in pursuance thereof we find an attachment upon a prohibition in this form ensuing.

Antiq. Brit. Eccles. 209.

Put the Bishop of *N.* to his pledges, that he be before our Justices, to shew cause why he made to be summoned, and by Ecclesiastical censures, constrained Lay-persons, Men or Women, to appear before him to swear unwillingly at the Bishop's pleasure, to the great prejudice of our Crown and dignity, and contrary to the custom of the Kingdom of *England*. And thus both King and Clergy were at contest for this power over the peoples consciences, to which neither had the right otherwise than by rules of Law.

Regist. fo. 36.

Bigamists shall not be allowed their Clergy, whether they become such before the Council of Lyons, *or since; and that Constitution there made shall be so construed.*

Stat. Bigam. 4 Ed. 1. cap 5.

Whatsoever therefore their Synods in those times pretended against the married Clergy, seemeth by this Law that they had Clergy that were married once and again; and yet before and after the Council were admitted as Clerks in the judgement of the Law. But the general Council interposes their authority, and deprives them that are the second time married, of all their privileges of Clergy. It was it seemeth

twenty

twenty years and more after that Council, before the Churchmen in *England* were throughly reformed; for either some were still *Bigami* at the making of this Law, or as touching that point it was vain; nor is it easie to conceive what occasion should after so long a time move such exposition, the words of the Constitution being *Bigamos omni privilegio clericali declaramus esse nudatos.* Now whether this slow Reformation arose from the defect in Law, or in obedience thereto, may be gathered from some particulars ensuing. First, it is apparent that the Canons of general Councils, *eo nomine*, had formerly of ancient times gotten a kind of preheminence in this Nation; but by what means is not so clear. In the Saxon times, they were of no further force than the great Council of this Kingdom allowed by expres act. For the Nicene Faith, and the first five general Councils were received by Synodical confirmations of this Kingdom made in the joynt meeting both of the Laity and Clergy; and during such joynt consulting the summons to the general Councils was sent to the King to send Bishops, Abbots, *&c.* but after that the Laity were excluded by the Clergy from their meetings, and the King himself also served in the same manner; the summons to the general Council issued forth to the Bishops immediately, and in particular to each of them, and to the Abbots and Priors in general; by vertue whereof, they went *inconsulto Rege*, (and sometimes *Rege renitente*) and appeared either personally or by *proxy*. Others came as parties, to give and receive direction, or hear sentence in matters tending to spiritual regards: and for this cause issued summons sometimes even to Kings; as at the Council of *Lyons* aforesaid, it's said, that the Pope had cited *Reges terræ & alios mundi principes & dictum principem*, meaning *Henry* the third; the matter was for assistance to the holy War; and to determine the matter between *Henry* 3*rd.* and his Clergy-men. And as in that case, so in others of that kind, Kings would send their Ambassadours or Proctors, and give them power in their Princes name *intereſſendi, tractandi, communicandi & concludendi.* First, of such matters *quæ ad reformationem Ecclesiæ universalis in capite & membris*, then of such as concern

General Councils.

Bineus tom. 13 *Pſ.* 2 *pag.* 674 *M. Paris.*

M. Paris. An 1245.

concern *fidei orthodoxæ fulciamentum*, *Regumque ac principum pacificationem*, or any other particular cauſe which occaſionally might be inſerted: ſo long then as Kings had their votes in the General Councils, they were engaged in the maintenance of their decrees; and by this means entred the Canon-Law into Kingdoms. Nor was the vote of Kings difficult to be obtained, eſpecially in matters that trenched not upon the Crown; for the Pope (knowing well that Kings were too wiſe to adventure their own perſons into foraign parts where the General Councils were holden, and that it was thrift for them to ſend ſuch proctors that might not altogether ſpend upon the King's purſe) allowed Biſhops and Clergy-men to be Proctors for their Princes, that in the negative they might be *pii inimici*, and leſs active; but in the affirmative zealous: and ſo make the way wider by the Temporal and Spiritual vote joyned in one. Neither did Kings only ſave their purſe, but they alſo made their own further advantage hereby; for by the engagement and reſpect, which theſe his proctors had in Councils, they (being for the moſt part ſuch as were had in beſt eſteem) obtained better reſpect to the cauſe that they handled, and ſpeedier diſpatch. *Bineus Tom. 3. P. 2. pag 913. & Tom. 4. P. 1. pag. 21.*

Nevertheleſs the caſe ſometimes was ſuch as could not expect favour, and then as the King's temper was they would ſometimes ride it out with full ſail, and to that end would either joyn with their Eccleſiaſtical Proctors ſome of the Barons, and great men of their Realm, to add to the cry, and make their affairs ring louder in the ears of Fame (although the Pope had the greater vote) or otherwiſe would ſend an inhibition unto their Proctors and their aſſiſtants; or an injunction to look to the rights of the Crown (as *Henry* the third did at the Council at *Lyons*) and this founded in nature of a proteſt, and (within the Realm of *England*) had the force of a proviſo, or ſaving. But if the worſt of all came to paſs, *viz.* that the Council paſſed the cauſe againſt Kings without any inhibition or injunction: yet could it not bind the Law of the Land, or Kings juſt prerogatives, no not in theſe times of *Rome's* hour, and of the power of darkneſs: For at a Synod *Fox Mart. P. 2. 263.*

holden by Arch-Biſhop *Peckham*, *An.* 1280. the Acts of the Council of *Lyons* were ratified, and amongſt others, a Canon againſt non-reſidency and pluralities; and yet neither Council nor Synod could prevail, for in *Edward* the ſecond's time an Abbot preſenting to a Church vacant (as was ſuppoſed) by the Canon of pluralities, the King whoſe Chaplain was diſturbed, enjoyned the Abbot to revoke his preſentation upon this ground, *Cum igitur, &c.* in Engliſh thus: *Whereas therefore that decree bindeth not our Clerks in our ſervice, in regard that the Kings and Princes of* England, *from time to time have enjoyed that liberty and prerogative, that their Clerks whilſt they attend upon their ſervice ſhall not be conſtrained to undertake holy things, or to be perſonally reſident on their Benefices*, &c.

Antiq. Brit. Eccleſ. fo. 209.

And if this preſent Law be conſidered whereof we now treat, which took leave to enact a ſence upon a former Canon ſo long ſince made; and (which is all one) to make a general Council (will or nill it) to tread in the ſteps of an Engliſh Parliament, or (which is more mean) to ſpeak after the ſence of an Engliſh Declaration that had not yet attained the full growth of a Statute, as was then conceived; it will evidently appear, that the power of a Council made up of a mixture of a few votes out of ſeveral Nations, or the major part of them, being unacquainted with the Laws and Cuſtoms of Nations (other than their own) was too mean to ſet a Law upon any particular Nation contrary to it's own original and fundamental Law. And as the Voters ſent to the general Councils from *England* were but few, ſo neither were the Proctors, as may appear from this, that Pope *Innocent* out of his moderation, if we may believe it; and to avoid much expence, as he ſaith, did order that the number of Proctors in ſuch caſes, ſhould be few: but in truth the times then were no times for moderation amongſt Popes and their Officers, and therefore it was another thing that pinched; for multitude of Proctors, if their number had not been moderated, might perhaps if not prevail, yet ſo blemiſh the contrary party, that what the Pope ſhould get, muſt coſt him loſs of ſpirits if not blood; and although the Biſhops being faſt Friends to the Pope by vertue of

30 *aſſ. pl. 5.*

of their Oath did prevail in power, and the Pope had the control of the Council: yet the exceeding number of the Proctors on the contrary, might render their concluſions ſomewhat queſtionable in point of honeſty, as being made againſt the minds of the greater number of perſons preſent, though their votes were fewer. To avoid this difficulty therefore for more ſurety-ſake, the Popes enlarged the number of voters; for whereas it ſeemeth to be an ancient rule, that only four Biſhops ſhould go out of *England* to the general Council, in after ages not one Biſhop could be ſpared, unleſs in caſes of great and emergent conſequence; as may appear by the Pope's Letter to *Henry* the third, and the caſe required it: for the oppreſſions of the Pope began to ring ſo loud, as the holy Chair began to ſhake. Neither did Kings confine themſelves to any certain number of Proctors, notwithſtanding the Pope's moderation; but as the caſe required ſent more or leſs, as unto that Council at *Piſa*, for the compoſing and quieting that great ſchiſm in the Popedom, *Henry* the fourth ſent ſolemn Ambaſſadours, and with them nigh eighty in all. But unto the Council at *Baſil*, *Henry* the ſixth ſent not above twelve or thirteen, as Mr. *Selden* more particularly relateth. And unto the Council at *Lyons*, formerly mentioned, the Parliament ſent but ſix or ſeven to remonſtrate their complaints of the extorſions of the Court at *Rome*, their Legates and Emiſſaries. The ſum of all will be, that the Acts of general Councils, were but Councils, which being offered to the ſence of the Parliament of *England* might grow up to the degree of Laws, if the Parliament liked them.

Hoveden. An. 1179.

M. Paris. An. 1245.

Spicil. 215

Nevertheleſs National Synods in *England*, undertook the quarrel of general Councils: for Arch-Biſhop *Peckham* in a Synod, 1280. enjoyned the conſtitutions made in the Council at *Lyons*, to be obſerved under a curſe without conſultation firſt had with the Parliament, or before he knew whether they would be right or wrong; and before him *Boniface* made conſtitutions in oppoſition to the cuſtoms of the Kingdom, ſo as the matter was now come to a kind of conteſt, whether Synods or Parliaments ſhould hold ſupremacy in doubtful

Synods.

cases concerning the limits of the Ecclesiastical and Temporal power: for henceforth Kings must bid adieu to the Synods, and sit no more amongst them; and Synods now think themselves free to consult and determine what they please without speaking under correction; nor was there other remedy left to Kings but threats, by Writs directed to the Bishops, *firmiter inhibendo quod sicut Baronias quas de Rege tenent deligunt nullo modo præsumunt concilium tenere de aliquibus quæ ad coronam Regis attinent vel quæ ad personam Regis vel statum suum vel statum concilii sui contingunt, quod si fecerint Rex inde se capiat ad Baronias suas.*

Rot. Parliam. 18 H. 3. num. 17.

And this prevailed so far as the Bishops durst not adventure too far lest they should go beyond their guard; and therefore they come and ask leave of the Parliament in cases that trenched upon the Law of the Kingdom, as they did in the case of bastardy, wherein they would have had their consent that children born before marriage might be made legitimate by the marriage subsequent; and yet they could not prevail, for they were answered *Nolumus leges Angliæ mutari*, notwithstanding that the Canon-Law, and the Laws of the Normans sided with them; and so they obtained not their desire, although they still retained the Trial of general bastardy unto themselves.

Stat. Merton. cap. 9.

Nevertheless the times were such, as Kings being too weakly assisted by the people, and the Clergy strongly seconded by the Pope, they took advantage of those times of distraction, so as to hold themselves no farther obliged to the King, than the Pope, and their own covetousness would allow them; and to make all sure, they had settled it so far as they were able by a constitution, that the Clergy were not bound to aid the King *Papa inconsulto*; and they put it in practise in a Synod under Arch-Bishop *Winchelsie*, *Anno* 1295. in the time of *Edward* the first; and although the King prevailed in the conclusion at that time, yet from the times of *Henry* the third, the Clergy for future times, granted their aids to the King by themselves, and apart from the rest of the body of the Kingdom, and held themselves not bound by any aid granted by the Parliament; albeit

Antiq. Brit.

albeit that their own aids granted in their Synods were not obligatory unto the body of the Clergy in this Kingdom, unleſs firſt allowed and confirmed by the Parliament. And thus is *England* become like a two bodied monſter ſupported with one pair of Legs.

CHAP. LXVII.

Of the condition of the Free-men of England, *of the grand Charter, and other Statutes during the Reigns of theſe Kings.*

SHattered aſunder by broils of Civil Wars, the Free-men having laid aſide that regard of the ancient mutual covenant, and bond of Decenners are now become weak, and almoſt enthralled to the luſt of Kings, Lords, Pope, and Engliſh Clergy; and therefore it's no wonder if Taxes and Tributes were many and new, although moſt of them deſerved not to march under any banner but the colours of oppreſſion; nor did any thing ſave them from the worſt Tenure of all, but the ſeveral intereſts of thoſe ſuperiour powers which oftentimes did juſtle with one another, and thereby gave the Commons liberty to take breath, ſo as though for the preſent they loſt ground and hunted upon a cool ſcent, yet they ſtill retained the prey within their view. Sometimes they were caſt far behind; other times they recovered themſelves; a truce is cryed, and Laws are made to moderate all, and determine the bounds of every one; and thus comes the grand Charter into the publick Theatre. The Hiſtorian ſaith, it was the ſame with that of King *John's* framing; and yet by comparing them together, we find them diſagreeing both in words and ſence, and therefore ſhall ſum the ſame up as ſhortly as I can, obſerving the difference of the two Charters as I paſs along. The firſt Chapter concerned the Church, of which ſufficient hath been ſpoken. *Mag. Charta.*

The Free-men ſhall enjoy theſe liberties to them and their heirs for ever. *cap. 2.*

The

Mag. Charta. cap. 3. *The heir in Knight-service shall pay the ancient relief.* That reliefs were settled by the Saxons, hath been already shewed, and also that they were continued and confirmed by *Henry* the first: only in those times they were paid in Horses, Arms, &c. but in after times all was turned into money, which was more beneficial for all.

cap. 4: *Vide Stat. de Wardis*, 28 *E.* 1 *Lords shall have their Wards bodies, and Lands after homage received until the full age, though the Ward be formerly Knighted.*

Glanv. lib. 6. *cap.* 1. & 4. The Law of Wardship may seem more anciently seated in this Kingdom than the Normans times, for if the Statutes of *Scotland* bear any credit, that Law was in *Scotland* before those times. The Lords were not to have the Wardship before they were possessed of the Tenure, because it was theirs as a fruit of the Tenure, according to the Saxon Law concerning distress, that it could not be in the power of the Lord to distrain till he was possessed of the service. And if by fraudulent conveyance the heir did hold the Lord out of possession, a Writ of Ward did lie against him; and if he did not appear the Lord might seise the Lands, unless in case of Wardship *per cause de guard.*

Stat. Marlb. cap. 6 & 7.

Stat. Marlb. cap. 16. & *Prerog. Reg. cap.* 3. And in case the Lord would hold the Wardship longer than the full age of the heir, an Assize did lie against the Lord, for the heir could not enter without livery. But if the heir were of full age at the time of the Ancestor's death, the Lord could not enter the Lands; and yet he should have a relief, and the primer seisin.

Prerog. Reg. cap. 13. And if the heir entred the Lands before homage done, he gained no Free-hold, though he were Knighted before, as this Law provideth: for it may seem that these times of civil War, brought forth a trick of Knighting betimes, as an honourable encouragement for young sparks to enter the field before they were compleat men of discretion to know whether the cause of War was good or evil: and yet reason might induce a conceit that he that was thought meet to do Knight-service in his own person, might expect the maintenance fit for the ability of the person and honour of the service.

Grantees

Grantees or their Assigns, or Committees of Wardships shall preserve the Land, &c. from Waste, and the Tenants from extortion. Mag. Charta.

They shall yield up the same stocked if they receive them stocked. cap. 6.

The first of these is the Law of common reason; for it's contrary to guardianship, to destroy that which by their office they ought to preserve. As touching the words of the Law, the Grantees are omitted in the Charter of King *John*; and also their Assignees, albeit that doubtless they were within the intent and meaning of the Law. The matter declares plainly not only the oppression of Lords upon their Wards, but also the corruption even of the Law it self, that at the first aimed at the good of the publick, and honour of Knight-service, but now was degenerated into the base desire of profit, by making market of the Wards estates and marriages, that brought in strip and waste of Estates, and niggardly neglect of the education and training up of the persons of the Wards, and an imbasing of the generation of mankind and spoil of times. Nor did these times ever espy, or provide against the worst of these, but only endeavoured to save the estate by punishing the wasters in damages by this Law, and by forfeiture of the Wardship by a Law made in the time of *Edward* the first; and this as well for Waste done during the time of the custody, as in the life-time of his Ancestors, by another Law in *Edward* the first's time. And because the Escheators and their under-Officers used to serve themselves out of the estates of minors before they certified to the King his right; and those were not within the Law of *Magna Charta*, or at least not so reputed: It was therefore afterwards provided, that these also should render damages in a Writ of waste to be brought against them.

Stat. Gloc. cap. 5.

Stat. de vasto. 20 E. 1.

Artic. sup. cart. cap. 18.

The marriage of Wards shall be without disparagement. cap. 7.

It was an ancient Law among the Germans, and the Saxons brought it hither, and as a Law settled it, that marriage must be amongst

Tacitus mor. Germ.

Mag. Charta. amongſt equals, but the Danes and Normans ſlighted it, and yet it continued, and was revived. Now as the Lord had the tuition of the Ward inſtead of the Anceſtor, ſo had he the care of the marriage in ſuch manner as the Anceſtor might have had if he had lived. For in caſe the Ward were ſtoln and married, the delinquent ſuffered fine and impriſonment. Or if the Ward married without the Lord's conſent, he ſhall have the double value, and hold the Land over till ſatisfaction; But in caſe the Lord marrieth the Ward within fourteen years of Age to it's diſparagement, he ſhall loſe his Wardſhip thereby. And if the Ward refuſeth to except of a marriage tendred by the Lord before her Age of 16. years, the Lord ſhall hold the Lands till he have received the full value; and in caſe where one Tenant holdeth of divers Lords, the Lords by priority ſhall have the marriage. Theſe Laws were in uſe during the Reigns of thoſe Kings, although it cannot be certainly concluded hereby, that the Wives portion properly belonged to the Lord, as for his own benefit, partly becauſe the Female Wards ſhould have no advancement, if it belonged to the Lords, and partly becauſe this forfeiture was given to the Lords in nature of a penalty, as appeareth by the frame of the Statute of *Merton*.

Stat. Merton. cap. 6.

cap. 7.

W. 1. c. 22.

Weſt. 2. c. 16.

cap. 8. Vide Stat. Merton. cap. 1. & 2. Prerog. Reg. cap. 4.

Widdows ſhall have their Dower, inheritance, their inheritance which they have joyntly with their husbands, their marriage freely, and their Quarentine.

With due regard of the opinion of others, I ſhall propound my own. It ſeemeth to me that the King is within this Law, as well as within the former Laws of the Normans, and thoſe of *Henry* the ſecond, that are of this kind; and as he is within the compaſs of every Law of this Charter, and that it is called the grand Charter, as moſt immediately coming from the King to the people, and not from the Lords. Nor is there any ground that the Law ſhould intend to give liberty to Widows of Wards, belonging to inferiour Lords, to marry whom they will; and that only the King's Widows ſhall be bound: Nor did this ſuit with the conteſt between the Barons and the King, that their Widows ſhould be bound unto the King, and

and the Widows of their Tenants discharged from their tuition; and therefore I conceive by the word *maritagium* is not meant liberty of marriage, but her marriage-portion, or *rationabilis pars*, according to the foregoing Laws of *Henry* the first, and *Henry* the second; and the Saxon customs. But as touching the liberty of marriage it is defined and expressed, that the Widows shall not be compelled to marry, nevertheless if they shall marry, they must marry with the Lord's liking, otherwise he might have an enemy to be his Tenant that might instead of homage and service, prove Traitor, and be his ruine. Lastly, touching the Widows dwelling, the Law thought it unreasonable, that she should immediately after the death of her husband be exposed to be harbourless, and therefore ordained that she might continue in her Husband's house forty days, if it were not a Castle, and then she was to have another dwelling assigned to her, because by common intendment she is not supposed to be a person meet to defend a Castle: and this was called her *Quarentine*, which I met not with amongst the Saxon Laws, and therefore suppose it be of Norman original. *Mag. Charta* cap. 9. *Glanv. lib.* 7. cap. 12.

No Man's Land shall be seised for debt to the King so long as the Personal Estate will satisfie. Nor shall his pledge be troubled, so long as the principal is sufficient, unless he refuse to satisfie, and then the pledge shall recover in value. cap. 10.

The first part hereof, was the issue of the Law concerning *elegit*, formerly observed in the Saxon times; for the regard of Law principally extended unto the person, next unto the Freehold, and lastly unto the goods. The latter part of this Law was the Law of Pledges or Decenners in the same times; unto which the Reader may resort for further light herein.

The City of London, *and other Cities, Burroughs, and Towns; and the Cinque-ports, and other Ports shall enjoy their ancient liberties.* cap. 11.

The whole Kingdom, and the members thereof herein ex-

Mag. Charta. preſſed had all their liberties ſaved from the dint of Conqueſt by the Law of *William* the firſt; upon which, although ſome *Seld. Spicil. fo.* 192. of the ſucceeding Kings did invade, yet none of them made any abſolute diſſeiſin, although diſturbance in ſome particulars. But King *John* did not only confirm them by his grand Charters, but by particular Charters to each Corporation, with ſome enlargements, and in his grand Charter inſerted one clauſe which in the grand Charter of *Henry* the third appeareth not, which thus enſueth, *Et ad habendum commune concilium Regni de auxiliis aſſidendis aliter quam in tribus caſibus prædictis*, which if the barbariſm of the Latine miſlead me not, is thus in Engliſh. And to have right of Common Council, or to be of the Common Council of the Kingdom for the aſſeſſing of aids, other than in three caſes aforeſaid, *viz.* for redemption of their Captive King, for Knighting of the King's Son, and for his Daughters marriage: becauſe theſe three might be due by the Common Law, the two latter by cuſtom, the former by common right, although mentioned from the late diſaſter of King *Richard*, which King *John* might with ſhame enough remember, and expect the ſame meaſure from the cenſure of an unquiet conſcience. I ſhall not enter into debate concerning the omiſſion hereof in the later Charters; poſſibly it might ſeem a tautology. Nor concerning the reſtriction, as if it did imply that the Burgeſſes had vote only in caſes of general aſſeſſments, but ſhall leave it to the conſideration of the Reader.

cap. 12. ***No diſtreſs ſhall be taken for greater ſervice or other matter than is due.***

Diſtreſſes are in nature, no other than a ſummons in act, or the bringing of a man to anſwer by ſeiſure of part of his goods; and it was uſed by the Saxons, as hath been ſhewed: and becauſe the rich men under colour of ſeeking their right, many times ſought for wrong, and though they could not prevail in the iſſue, yet prevailed ſo far as the Defendant could not *Glanvil. lib.* 12 *cap.* 9. eſcape without charge and hinderance; therefore the Law provided a Writ of remedy againſt unjuſt vexation, which *Glanvil*

vil remembreth us of; and yet becauſe that remedy alſo carried with it matter of charge and diſturbance to the Plaintiff, and ſo the remedy might be worſe than the diſeaſe; therefore the Law defined diſtreſſes by circumſtances of perſon, matter, time, and place, under penalties of fine and amercement, beſides the recompence to the party: Firſt, it muſt not be taken, but by leave from the King's Court, unleſs in caſe of matters due by common right, and upon complaint made by the Plaintiff. The King ſent out a ſummons in this manner, *Henricus Rex Ang. Hominibus Abbatis de Ramſey ſalutem. Precipio quod cito & juſte reddatis Abbati Domino veſtro quicquid ei debetis in cenſu & firma & debetis & placitis, quod ſi nolueritis, ipſe vos inde conſtringat per pecuniam veſtram.* And in all caſes of matters due by common right, the diſtreſs never was done in an arbitrary way, but by Judicial Act in the Lord's Court. Secondly, no diſtreſs for ſuit ſhall be made out of the Fee, nor againſt any perſon, but ſuch as are of that Fee. Nor ſhall any diſtreſs be made in the King's high-way or open ſtreet, but by the King's Officer, and ſpecial Writ; becauſe diſtreſs is incident to ſervice, and that is due as from the Fee; and therefore by common right, the ſame muſt be recovered from the Fee, and ſuch as owe ſervice in the ſame; but the high-way or open ſtreet are more properly a Franchiſe belonging to the King, although the ſoil haply may be the Lords; and therefore it was an old Law that they ſhould be under the King's ſafeguard, *Sit pax publica per communes vias*; and no violence muſt be there tolerated but by the King's eſpecial Writ, which preſuppoſeth the eſpecial notice taken by the King of the nature of the occaſion. A moderation alſo muſt be obſerved in the taking of the diſtreſs; for it muſt not be exceſſive, and alſo in keeping thereof: for if the owner will, he may replevy the ſame according to the ancient courſe; and the Sheriff muſt grant replevy if it be demanded, although formerly no replevy was without ſpecial Writ, and yet they alſo not always readily obeyed. For the times were ſuch as the Lords were bold with the King's Courts, and Miniſters, and refuſed the order of the Law; now in ſuch caſes wherein the matter concerned contempt of the

Mag. Charta.

Stat. Marlb. cap. 1.

Glanvil. lib. 9. cap. 1 & 8.

Gloſſ. 215.

Glanvil. lib. 9. cap. 8.

Stat. Marlb. cap. 2, 3, 4, 15.

Ll. Ina.

Marlb. c. 21. Glanvil. l. 12. cap. 12.

Mag. Charta. King's Authority, a fine was set upon the offender: but in case it concerned only a tort done to the party, he was amerced: the one is called redemption, because the penalty otherwise must lie upon the person, if it be not redeemed by pecuniary fine: the other is called amercement, which is originally a satisfaction unto the party wronged, by recompence out of the personal estate of the delinquent. Thirdly, as touching the matter of the distress, it must not be of Plough-beasts or sheep, unless in case of damage fesant, if other distress may be had; for the Law had a care of such Cattel as were most of publick concernment, and which was the main stock of subsistence, so far as Justice would allow: and therefore the unjust taking of any man's Cattel by any person whatsoever is liable to the same penalties that unjust distresses are. Fourthly, concerning the using of the distress, it must not be sold, no not in the King's case till fifteen days be past, after it is taken; nor must it be carried out of the County, but it must be so impounded as the owner may come to feed it; and it must be discharged if the owner give security of satisfaction before the return of the Writ. Fifthly, the intent of the distresses must be that which is just, and therefore not for other suit than by the Feoffment is due, or else by prescription; and in case many are jointly seised, the suit shall be by one, and the rest shall contribute. Nor must any man be compelled to shew his Title to his Land by distress.

Miror cap. 5. Sec. 3.

Distric. Scac.

Artic. mag. cart. cap. 12.

West 1. cap. 16.

Marlb. c. 4.

Distrie. Scac.

Artic. Sup. cart. cap. 12.

Marlb. cap. 9.

cap. 22.

cap. 13.

The Common-pleas shall be holden in one certain place.

The Office of Judge of the Common-pleas was in my opinion, distinct and several from that of the Crown-pleas; nor though one and the same man might execute both Authorities, doth it therefore follow that it was by one and the same power; as if being Judge, he had thereby power in all matters of the Common-pleas, and also of the Crown: for though it be true that *Bracton* saith, the King hath one proper Court wherein are the chief Judges, which both by his own Testimony, and *Briton's* also, did hear and determine causes of all sorts; yet is it

Capitales Justi nostri.

it true also that it was by appeal or Writ of errour, as in case of false Judgement; and that the King had *plures curias*, which doubtless had their proper work: and in the time of *Henry* the second, it's clear that six were especially assigned for the Common pleas throughout the whole Realm; and yet by another especial Commission, or Letters Patents, the same men might also have power to determine matters of the Crown, as at this day in their several circuits. This Law therefore doth not as I conceive work any alteration, but only in this, that whereas formerly the Judges of Common-pleas attended on the King's Court continually, as all other Judges did; and whither the King removed they did the like, which was a great uncertainty and grievance unto the Commons. Henceforth they are fixed to a certain place. *Mag. Charta.* *Marl. cap.* 20

Assize of Novel Disseisin *and* Mortdancester *shall be determined in the proper County only, and by the Justices* itinerant *sent by the King or his Chief Justices.* *cap.* 14.

The Law was so declared in *Henry* the second's time, and was questionless put in practice, so far forth as with convenience to the Judges might be; but now the convenience of the people is preferred, and they must not be brought up to the King's Court, but the Justices must come down to them; and yet in case of difficulty, the bench where the Common-pleas are holden must determine the matter, and where the time in the *Iter* in one County is too scant, the remanets shall be adjourned over to be tried elsewhere in that circuit; which sheweth that the Judges *itinerant*, had their time proportioned out to every County. These trials also were so favoured, as in the then holy times of *Advent* and *Septuagessima* or Lent, they might be tried, which although it was gained by prayer made by the King to the Bishops, as the words of that Law are concluded; yet it shews that the Parliament had so much light as to hold the time not inherently holy, but meerly sequestred by the will of the Clergy. The Plaintiffs also in *Mortdancester* may be divers, if there be divers heirs of one Ancestor by one Title. *Westm. cap.* 51 *Stat. Glouc. cap.* 6.

And

Mag. Charta. Conjunct. feofat. An. 34. *E.* 1. *Stat. Gloc. c.* 1.

And if there be joynt-Tenants, and the Writ be againſt but one, and the ſame pleaded, the Writ ſhall abate; but if joynt-Tenancy be pleaded, and the plea be falſe, the Defendant ſhall be fined, and impriſoned. And if in the Action the verdict be for the Plaintiff, he ſhall recover damages.

Cap 15. *Darrain preſentment ſhall be taken only in the common Bank.*

Trials in the common Bank or other Courts at *Weſtminſter*, have ever had an honourable eſteem above thoſe in the County by *Niſi prius*, although all be equally available. This might be one cauſe why the Titles of Churches were ſtill retained at the common Bank, when as all other rode circuit; for that Churches affairs in thoſe times were of high regard: Speed of Trial alſo was not little regarded herein; for Juſtices by *Niſi prius* properly were but for enquiry till the Statute at *Weſtm.* *Weſt.* 2. *cap.* 30. the ſecond made them of *Oyer* and *Terminer* in the caſes of *Quare Impedit*, and Darrain preſentment, and gave them power to give judgement. And thus the Commons gained ſtill in point of conveniency.

cap. 16. *Free-men ſhall be amerced according to the degree of the fault, ſaving to them their Free hold, and to Merchants their main ſtock, and to Villains their Waynage; and Clergymen ſhall be amerced according to their Lay-fee. Barons ſhall be amerced by their Peers, others by the vicinage.*

In this, regard is to be had firſt of the perſons that are to be amerced, then of the parties by whom, and laſtly, of the nature and quantity of amercements. The perſons amerced are ranked into four Claſſes: Barons, Clergy, Free-men, and villains. But in regard of the parties by whom they are to be amerced, they are but two, Barons and Freemen, for the Clergy villains, and Free-men are to be amerced by the Free-men of the neighbourhood. In what Courts theſe amercements ſhall be, the *Marlb. cap.* 19. Stat. *Marlbr.* tells us, not before the Eſcheator, nor other that make enquiry by Commiſſion or Writ, nor before the Juſtices of

of Assize, or *Oyer* and *Terminer*, but only before the chief Justices, or Justices *itinerant*. The Statute of *Westminster* adds a fifth Classies of Cities, and Towns, by expres words, which seems not so necessary, unless in pillaging and oppressing times, for they were taken to be within the Statute of *Magna Charta*, though not therein named. The rule of the quantity of amercements is now set down in general, and left to the discretion of the Peers or Vicinage, which formerly by the Saxons were specially set down in the Law. The rule in general is with a *ne plus ultra*, viz. not further or more than that the party amerced may spare, and yet hold on in the maintenance of his course, according to his degree. And it must be also according to the quantity of the offence, for the greatest amercements must not be ranked with the least offences: so as in every degree the main sustenance of the party is saved: yea, the villains (however mean they be) they must have their maintenance. And this sheweth that villains had a maintenance, which was under the protection of the Law, and not under the gripe of their Lords to all intents, unless they were the King's villains, who it seemeth were meerly under the King's mercy, as being both their Lord and King, against whom they could hold nothing as properly their own: and therefore in all other cases, even then the villains were born under a kind of liberty, as in the Saxons time formerly hath been declared; which the Law protected against their own Lords.

Mag. Charta. *Westm. 1. c. 6.* *Mirror cap. 5. sect. 4.*

No man shall be compelled to make, repair, or maintain any Bridges, Banks, or Causies, other or otherwise, than they were wont to be made, repaired, or maintained in the time of Henry ***the second.***

cap. 17. & 18.

The limitation to the times of *Henry* the second, sheweth that his Justice was such as maintained the common rights of men; but in the times of *Richard* the first, and more especially of King *John*, those Rivers, Waters, and fishings formerly used in common, were encroached upon, enclosed and appropriated, to particular mens uses, which occasioned many Bridges, Banks,

Mirror cap. 5. sect. 2.

Mag. Charta. Banks, and Cauſies, to be made and repaired to the great charge of private men, all which are diſcharged by this Law.

cap. 19. *No Sheriff, Conſtable, Coroner, or other Bayliff, ſhall hold any pleas of the Crown.*

Eſcheators are alſo expreſſed in the old books of *Magna Charta*, and the abridgements, however it ſeemeth that it's within the intent of the Law, which was made to avoid the extraordinary oppreſſion that theſe Officers exerciſed upon the people. For Eſcheators under colour of inquiry of Eſtates of men would enquire of matters concerning the lives of men, and Sheriffs that had power of trials in caſes of Theft, as hath been already ſhewn, abaſed the ſame for their own benefit, becauſe in ſuch caſes they had the forfeitures, This Law therefore takes away ſuch occaſions, *viz*, from the Sheriffs and Coroners and Bailiffs or Juſtices, (other than by expreſs commiſſion thereto aſſigned) all power to hold pleas of the Crown by trial, leaving unto them nevertheleſs, power of enquiry, of which anciently they had the right.

Ll. Hen. 1. *c.* 8. *Glanv. lib.* 1. *cap.* 2.

p. 193.

cap. 20. *If the King's Tenant dieth ſuppoſed in arrear, an inventory ſhall be made of his ſtock by honeſt men, but it ſhall not be removed till accounts be cleared; and the overplus ſhall go to the Executors, ſaving to the Wife and Children their reaſonable part.*

The firſt clauſe hereof was a Law in *Henry* the firſt's time, and a cuſtomary Law in *Henry* the ſecond's time, being a remedy againſt an old Norman riot of the Lord's ſeiſure of the whole perſonal eſtate of the party deceaſed, under colour of a Law. The ſecond part concerning the overplus hath this additional ſubjoyned in the Charter of King *John*. If any Freeman die inteſtate, his Chattels ſhall be divided by his Parents, and his friends in the preſence of the Church, ſaving to every one their proper debts: and thus ſince the Conqueſt, the Church-men encroached by degrees unto a great power in matters Teſtamentary; I ſay by degrees: for as yet by this Law it appeareth, that they were but overſeers or eye-witneſſes; for as yet

Glanv. lib. 7. *cap.* 5.

yet right of ordering or disposing they had none, as may appear in that case of a bastard dying without issue and intestate, the Lord shall have his personal Estate: and in all cases the Executor had then nothing but bare assets, and the overplus was assigned between the Wife and Children according to their reasonable part: or if the party died intestate, the next friends did administer, paying the debts, and making dividend of the overplus into the reasonable parts, according to the ancient Saxon custom still continued: nor doth the testimony cited out of *Bracton* prove any other, than that the Ancestor hath free power to order his estate as he pleaseth, and that the Children shall have no more than is left unto them by their Ancestor, either in his will, or in case of dying intestate, by the custom or Law which is, and ever was the *rationabilis pars.*

Mag. Charta Glanvil. lib. 7. cap. 16.

Coke Instit. 2. pag. 33.

No purveyance for any Castle out of the same Town where the Castle is, but present satisfaction must be made: and if in the same Town, satisfaction must be made within forty days.

cap. 21.

Purveyance was ancient provision for the necessities of the publick, and so far was commendable, seeing it's not the common case of all men to regard the publick above their own private interest; therefore the publick must provide for it self, by their means in whom the publick is most concerned: and this was in those elder times, but in two cases, *viz.* of Kings and Castles; in the one of which the government is principally concerned, in the other the publick defence. For it may be well conjectured that Castles were either first made in places commodious for habitation, and great Towns gathered to them for their better safety; or that the Towns were first gathered in places of commodious habitation, and then Castles were made for their better defence, or if they were imposed upon them by the Victor to keep them in awe, they were nevertheless by continuance together become tractable, and conspired for the mutual defence of each other. But as touching such Cittadels or Castles that were set

Mag. Charta. in solitary places, they may seem rather first intended for the particular defence of some particular Man and his Family, and neighbouring Tenants; and therefore in the purveyance for Castles, it seems the proper Town wherein it is, is principally liable to that duty, because their safety is more principally interested; and therefore prizes there taken, may be paid at a day to come; but in all other places immediately. Nevertheless this lasted not long, for the Soldiers found out a trick of favouring their own quarters, and preserving them in heart against a back Winter, knowing that at such times it's better to seek for provision nigh, than to be compelled to seek far off. But this stratagem was cut off by the next King, who inhibited all manner of purveyance in any other Town, than in the same Town wherein the Castle is seated. This was a charge that was but Temporary and occasional: That which was more lasting and burthensome upon the Subjects, was purveyance for the King, which nevertheless cannot be avoided, by reason of the greatness of his retinue, especially in those days; and if they should have their resort to the Market, the same could not be free to the people, for that the first service must be for the King's household, and so what scraps will be left for the Commons no man can tell. It was therefore necessary for the King's Family, to be maintained by purveyance; and to avoid the many inconveniences, which might and did arise in those spoiling times, It was ordained that it should be Felony for any purveyor to purvey without warrant. 2. That none but the King's purveyor must purvey for the King's house, and that he must purvey only for the King's house; and to purvey no more than is necessary; and to pay for the things they take. And because Kings were oftentimes necessitated for removal from place to place, purveyance of carriage was also allowed: and in case the Subjects were grieved either by more purveyance than was necessary, or by non payment for the commodities so taken, or with composition for the King's debts; for such purveyance the offendors were liable to fine and imprisonment. Or if they were grieved by purveyors without warrant, the offender was to be proceeded against, as in case of Felony.

Wall. 1. c. 7.

Artic. super cart. cap. 2.

West. 1. c. 31.

Artic. super cart. cap. 2.

He

He that serveth in Castle-guard is not liable to pay-ment of Rent for that service; Nor is he compellable to either, so long as he is in the service in the Army. Mag. Charta. cap. 22.

By the ancient custom none but a Knight might be charged with the guard of a Castle belonging to the King, for the letter of this Law mentioneth only such; and therefore to hold by Castle-guard is a Tenure in Knight-service: and it seemeth that Rent for Castle-guard originally was consistent with Knight-service, and that it was not annual; but promiscuously Knights might either perform the service, or pay Rent in lieu thereof; and upon occasion did neither, if the King sent them into the field. And lastly, that a Knight might either do the service in his own person, or by his Esquire, or another appointed by him thereto.

No Knights, nor Lords, nor Church-men's Carriages, nor no Man's wood shall be taken against the owners consent; Nor shall any man's Carriages be taken, if he will pay the hire limited by the Law. cap. 23.

Church-men were exempted from charge to the King's carriages, meerly in favour to the Canon, which exempted the goods of the Clergy from such Lay-service; nevertheless the complaints of the Clergy formerly mentioned, shew that this was not duly observed. Knights and Lords were discharged not only for the maintenance of their port; but more principally because they were publick servants for the defence of the Kingdom in time of War; and the Kingdom was then equally served by themselves and their equipage, and their carriages, as a necessary assistant thereunto.

The King shall have no more profit of Felons Lands, than the year and a day, and the Lord is to have the remainder. cap. 24.

Anciently the Lords had all the estate of Felons, being their Tenants, and the King had only a prerogative to waste them, as a penalty or part thereof, but afterwards the Lords by agree- Instit. 2.

Mag. Charta. ment yeilded unto the King, the year and a days profit to save
Bract. lib. 3. fo. 137. the Lands from ſpoil; and in continuance of time, the King
Prerog. Reg. cap. 16. had both the year and day, and waſt. Fugitives alſo were in the ſame caſe, *viz.* ſuch as deſerted their Countrey either in time of need, or ſuch as fled from the Trial of Law in criminal caſes: for in both caſes the Saxons accounted them as common Felons. Nevertheleſs the two cuſtoms of *Gloceſter* and *Kent* are ſaved out of this Law by the Statute; the firſt whereof ſaves the Land to the heir from the Lord, and the ſecond ſaves the ſame to the heirs males, or for want of ſuch to the heirs Females, and to the Wife her moity until ſhe be eſpouſed to another man, unleſs ſhe ſhall forfeit the ſame by fornication during her Widowhood. And by the ſame Law alſo the King had all Eſcheats of the Tenants of Arch-Biſhops, and Biſhops during the vacancy as a perquiſite. But Eſcheats of Land and Tenement in Cities or Burroughs the King had them in *jure coronæ*, of whomſoever they were holden.

Prerog. Reg. cap. 14.
Fits. 2. E. 2. Tit. Eſcheat 11.

All Wears ſhall be deſtroyed but ſuch as are by the Sea-coaſt.

cap. 25.

The Lieutenant of the Tower of *London* as it ſeemed, claimed a Lordſhip in the *Thames*, and by vertue thereof had all the Wears to his own uſe, as appeareth by a Charter made to the City of *London*, recited in the ſecond Inſtitutes upon this Law; and this was to the detriment of the Free-men, eſpecially of the City of *London*, in regard that all Free-men were to have right of free paſſage through Rivers, as well as through highways, and purpreſtures in either were equally noxious to the common liberty; and therefore that which is ſet down under the example or inſtance of the Rivers of *Thames* and *Medway*, contained all the Rivers in *England*; albeit that other parts of the Kingdom had not the like preſent regard as the City of *London* had.

cap. 26.

The Writ of precipe in capite *ſhall not be granted of any Free-hold, whereby a man may be in danger of loſing his Court thereby.*

It ſeemeth that it was one of the oppreſſions in thoſe times that

that if a suit were commenced in the inferiour or Lords court, concerning a free hold. A Writ of *præcipe in capite* might be had upon a surmise that the free hold was holden in *capite*, which might prove an absolute destruction to the inferiour Court, and was the spoil of the demandants case; and therefore I think the Charter of King *John* instead of the word court hath the word cause. *Mag. Charta.*

There shall be but one known weight and measure, and one breadth of Cloaths throughout the Realm of England. *cap.* 27.

This law of weights and measures was anciently established amongst the Saxons, as formerly hath been shewed, and continued in the Normans times, and confirmed by *Richard* the first and King *John*. And as touching the measure of the breadth of Cloaths, although it might seem to abridge the liberty of particular persons, yet because it was prejudicial to the common trade of the Kingdom, it was settled in this manner to avoid deceit, and to establish a known price of Cloths. And it seemeth that Wine was ordinarily made in *England* as well as Ale; otherwise the measures of Wine could not have been established by a Law in *England*, if they had been altogether made in other Countries. *Ll. Edgar c.* 8.

Inquisition of life and member shall be readily granted without Fees. *cap.* 28.

It was a Law of later original, made to take away a Norman oppression; for by the Saxon Law, as hath been already noted, no man was imprisoned for crime (not bailable) beyond the next County-court or Sheriff's Torn; but when those rural Courts began to lose their power, and the King's Courts to devour Trials of that nature, especially by the means of the Justices *itinerant*, which were but rare, and for divers years many times intermitted, during all which time supposed offenders must lie in Prison, which was quite contrary to the liberty of the Free-men amongst the Saxons; it occasioned a new device to save the common liberty by special Writs sued out

Mag. Charta. ... by the party imprisoned or under bail, supposing himself ... invented by hatred and malice; and by the same directed to the Sheriff and others, an inquisition was taken and trial made of the offence, whether he deserved loss of life or member; and if it were found for the supposed offender he was bailed till the next coming of the Justices: and for this the Writ was called the Writ of inquisition of life or member; and sometimes the Writ *de odio & atia.* But these inquests were soon become degenerate, and subject to much corruption, and
West. 1. cap. 11 therefore as soon met with a countercheck from the Law. Or first rather a regulation; for it was ordained that the Inquest should be chosen upon oath; and that two of the Inquest at the least should be Knights, and those not interessed in the cause:
Glocest. cap. 9. but yet this could not rectifie the matter, for it seemed so impossible to do Justice, and shew mercy this way, that the Writ is at length taken away; and men left to their lot till the coming of Justices *itinerant.* But this could not be endured above
West. 2 c. 29. seven years; for though the King be a brave Soldier, and prosperous, yet the people overcome him and recover their
cap. 29. Writs *de odio & atia* again.

Lords shall have the Wardships of their Tenants heirs, although they hold also of the King in Petit Serjeanty, *Socage, Burgage, or Fee-Farm.*

Inferiour Lords had the same right of Wardships with the King for their Tenures in Knight-service, although their Tenants did hold also of the King, unless they held of him in Knight-service, which was a service done by the Tenant's own person, or by the person of his Esquire, or other deputy in his stead; but as touching such service as was wont to be done to him by render or serving him with Arms, or other utensils: this was no Knight service, though such utensils concerned
Glanv. lib. 7. cap. 9. War, but was called *Petit Serjeanty*, as in the Law-books doth appear. Nevertheless *Henry* the third had usurped Wardships in such cases also, and the same amongst others occasioned the Barons Wars.

cap. 30. *No Judge shall compel a Free-man to confess matter against*

againſt himſelf upon oath without complaint firſt made againſt him. Nor ſhall receive any complaint without preſent proof. Mag. Charta.

This Law in the Original is ſet down in another kind of phraſe in the firſt part thereof, which is obſcure by reaſon thereof: in expreſs words it is thus, No Judge ſhall compel any man *ad legem manifeſtam*, which implieth that the matter was otherwiſe obſcure if the party that was complained of or ſuſpected did not manifeſt the ſame by his own declaring of the truth, or matter enquired after, and therefore they uſed in ſuch caſes to put him to Oath, and if he denyed the matter, or acquitted himſelf, the Judge would ſometimes diſcharge him, or otherwiſe put him to his compurgators; and this was called *lex manifeſta*, or *lex apparens*: and it was a trick firſt brought in by the Clergy, and the Temporal Judges imitated them therein; and this became a ſnare and ſore burthen to the Subjects. To avoid which, they complain of this new kind of Trial, and for remedy of this uſurpation, this Law reviveth and eſtabliſheth the only and old way of Trial; for *Glanvil* ſaith, *Ob infamiam non ſolet juxta legem terræ aliquis per legem apparentem ſe purgare, niſi prius convictus fuerit vel confeſſus in curia*: and therefore no man ought to be urged upon ſuch difficulties unleſs by the expreſs Law of the Land. The old way of Trial was firſt to bring in a complaint and witneſſes ready to maintain the ſame; and therefore both appeals and actions then uſed to conclude their pleas, with the names of witneſſes ſub-joyned, which at this day is implied in theſe general words, in their concluſions, *Et inde producit ſectam ſuam*, that is, he brings his ſect or ſuit, or ſuch as do follow or affirm his complaint, as another part alſo is implied in theſe words, *Et hoc paratus eſt verificare*. For if the Plaintiffs ſect or ſuit of witneſſes, did not fully prove the matter in fact, the Defendant's averment was made good by his own Oath, and the Oaths of twelve men, and ſo the Trial was concluded. Bracton fol. 6. Stil. ſuper Bingham.

No Free-man ſhall be impriſoned or diſſeiſed of his cap. 31.

Free-

Mag. Charta. *free-hold or liberties, outlawed, or baniſhed, or invaded, but by the Law of the Land, and judgment of his Peers. Nor ſhall Juſtice be ſold, delayed or denyed.*

It's a comprehenſive Law, and made up of many Saxon Laws; or rather an enforcement of all Laws, and a remedy againſt oppreſſion, paſt, preſent, and to come; and concerneth firſt the perſon, then his livelihood; as touching the perſon, his life and his liberty; his life ſhall be under the protection of the Law, and his liberty likewiſe, ſo as he ſhall be ſhut into no place by impriſonment, nor out of any place by baniſhment, but ſhall have liberty of ingreſs and egreſs. His eſtate both real and perſonal, ſhall alſo be under the protection of the Law, and the Law alſo ſhall be free, neither denyed nor delayed. I think it needleſs to ſhew how this was no new Law, but a confirmation of the old, and reparation added thereto, being much impaired by ſtormy times; for the ſum of all the foregoing diſcourſe tendeth thereto.

cap. 32. *Merchants ſhall have free and ſafe paſſage and trade without unjuſt Taxes, as by ancient cuſtom they ought. In time of War ſuch as are of the Enemies Countries ſhall be ſecured till it appear how the Engliſh Merchants are uſed in their Countries.*

That this was an ancient Law the words thereof ſhew, beſides what may be obſerved out of the Laws of *Æthelbred*, and other Saxon Laws. So as it appeareth that not only the Engliſh Free-men and Natives had their liberties aſſerted by the Law, but alſo Foraigners, if Merchants, had the like liberties for their perſons and goods, concerning trade, and maintenance of the ſame; and were hereby enabled to enjoy their own under the protection of the Law, as the Free-men had. And unto this Law the Charter of King *John* added this enſuing.

It ſhall be lawful for every Free-man to paſs freely to and from this Kingdom, ſaving Fealty to the King, unleſs in time of War; and then alſo for a ſhort ſpace, as may be for the common good, excepting priſoners, outlaws, and thoſe Country

Country-men that are in enmity, and Merchants who shall be dealt with as aforesaid. *Mag. Charta.*

And it seemeth that this Law of free passage out of the Kingdom, was not anciently fundamental, but only grounded upon reason of State, although the Free-men have liberty of free passage within the Kingdom according to that original Law, *sit pax publica per communes vias*; and for that cause, as I suppose it was wholly omitted in the Charter of *Henry* the third; as was also another Law concerning the Jews, which because it left an influence behind it (after the Jews were extinct in this Nation) and which continueth even unto this day, I shall insert it in this short sum.

After death of the Jew's debtor no usury shall be paid, during the minority of the heir, though the debt shall come into the King's hand. And the debt shall be paid, saving to the Wife her Dower and maintenance for the children, according to the quantity of the debtors Land, and saving the Lord's service; and in like manner of debts to others.

The whole doctrine of usury fell under the Title of Jews; for it seemeth it was their Trade, and their proper Trade hitherto. It was first that I met with, forbidden at a Legatine Council nigh 300. years before the Normans times: but by the Confessor's Law it was made penal to Christians, to the forfeiture of estate, and banishing; and therefore the Jews and all their substance were holden to be in nature of the King's villains, as touching their estate, for they could get nothing, but was at his mercy; and Kings did suffer them to continue this Trade for their own benefit, yet they did regulate it as touching infants, as by this Law of King *John*, and the Statute at *Merton* doth appear; but *Henry* the third did not put it into his Charter, as I think, because it was no liberty of the Subjects, but rather a prejudice thereto; and therefore *Edward* the first wholly took it away by a Statute made in his time, and thereby abolished the Jews. *Concil. Brit. 299.* *Ibid. 623.* *Glanv. lib. 7. cap. 16.* *M. Paris. An. 1229.* *Merton cap. 5.* *Stat. de Judaïs. An. 18 E. 1.*

Tenants Lands, holden of Lands escheated to the King, shall hold by the same services as formerly. *cap. 33.*

Mag. Charta. cap. 34. ***In all alienations of Lands sufficient shall be left for the Lord's distress.***

Prerog. Reg. cap. 7. Submitting to the judgement of the learned, I conceive that as well in the Saxon times as until this Law, any Tenant might alien only part of his Lands, and reserve the services to the alienor, because he could not reserve service (upon such alienation) unto the Lord Paramount, other than was formerly due to him, without the Lord's consent, and for the same reason could they not alien the whole Tenancy, to bind the Lord without his express license, saving the opinion in the book of 20 *ass. pl.* 17. Assizes, because no Tenant could be enforced upon any Lord, lest he might be his enemy. Nevertheless, it seemeth that *de facto* Tenants did usually alien their whole Tenancy; and although they could not thereby bar the Lord's right, yet because the Lord could not in such case have the distress of his own Tenant, this Law served so much from alienation, as might serve for security of the Lord's distress. But Tenants were not thus satisfied; the Lords would not part with their Tenants, although the Tenants necessity was never so urgent upon them to sell their Lands; and therefore at length they prevailed by 18 *Edw.* 1. the Statute of *Quia emptores* to have power to sell all, saving *Westm.* 3. *c.* 1. to the Lords their services formerly due; and thus the Lords were necessitated to grant licenses of alienation to such as the Tenants could provide to buy their Lands. Nor was this so prejudicial to the Lords in those days, when the publick quiet was settled, as it would have been in former times of War, when as the Lord's right was maintained more by might and the aid of his Tenants, than by Law, which then was of little power.

cap. 35. The 35*th.* Chapter I have formerly mentioned in the Chapter concerning the Clergy.

cap. 36. ***No man shall be appealed by a Woman for the death of any but her own husband.***

The right of appeal is grounded upon the greatest interest. Now because the wives interest seemeth wholly to be swallowed up

up in her husband; therefore she shall have an appeal of the death of him only; and such also was the Law in *Glanvil's* time. How far this point of interest shall extend to the degrees of consanguinity, the Norman Law formerly hath shewn. And against whom Appeals did lie, the Statute at *Westminster* tells us, *viz.* not only against the principal, but also against accessories; yet not against them till the principal be attainted. And because it was ordinary for men of nought to appeal others in a malicious way, it was by another Law established, that if the party appealed was acquitted, the appealor should not only render damages, but be imprisoned for a year.

Mag. Charta

p. 151.

West. 1. cap. 14.

West. 2. cap. 13

The County-court shall be holden at the wonted time.

The Torn shall be holden at the accustomed place twice in the year, viz. *after* Easter *and* Michaelmas.

cap. 36.

The view of Frank-pledges shall be holden at Michaelmas.

The Sheriff shall not extort.

The Sheriff's Courts had now lost somewhat of their jurisdiction, though for time and place they are confirmed *statu quo*; to the end that through uncertainty thereof the suiter might not make defaults, and be amerced; yet they lost much of their respect within the compass of these few years by two Laws, the one of which made at *Merton*, allowed all suiters to the rural Courts to appear by proxy or Attorney, which it seemeth had power to vote for the masters, in all cases publick and private; and did not only themselves grow into parties and maintenance of quarrels, and so spoiled these Courts of their common Justice, but rendred the Free-men ignorant and careless of the common good of the Country, and given over to their own private interest. And though the corruption of Justice was soon felt, and against it a Law was provided, *viz.* that the Sheriff should not allow of such corrupt Attorneys; yet this was no cure to the Free-men, who were still suffered to wax wanton at home, albeit that they were discharged from doing their suit in all other Hundreds but that wherein they dwell. The second Law that took away much honour from these Courts was that Law at

Merton. c. 10.

West. 1. cap. 33

Marlb. c. 10.

Ibid.

Mag. Charta. *Marlbridge* that discharged the Baronage of *England*, and the Clergy from their attendance at such service, and this also opened the door wider to oppression; for where greatness is, it carrieth therewith honour from the meaner sort, and a kind of awe and stop unto the minds of such men that otherwise would riot without restraint; and though it might also be said, that the presence of great men in such Courts would oversway the meaner, and make strong parties; yet it must also be acknowledged, that these parties being greater are the fewer, and do not so generally corrupt all sorts, as the corruption of the meaner sort do; it's said by the wise man, where the poor oppress the poor it's like a raging rain that leaves no food. The last branch in this Law is an inhibition to the Sheriff from extortion; and surely there was great need, and much more need than ever, now that the Lords and Clergy are absent. It was thought that the great occasion of the Sheriff's oppression was from above, I mean from the King that raised the values of the Farm of Counties granted to the Sheriffs, (for in those days Sheriffs gave no accounts, as of later times they have done) and therefore the Charter of King *John*, between the 17*th.* and 18*th. chap.* inserteth this clause, *Omnes Comitat. & Hundred. Wapentag. & Trethingi sint ad antiquas firmas absque ullo incremento exceptis Dominicis Maneriis nostris.* But this did not work the work, although it took away occasion, for the humour was fed from within, and turned to a sore upon that place that could never be cured to this day. Nor could the wisdom of times find other help to keep the same from growing mortal, but by scanting the dyet, and taking away that power and jurisdiction which formerly it enjoyed.

Artic. sup. cart. cap. 13, 14.

Stat. de vicecom. An. 9 *E.* 2.

cap. 37. The 37*th.* Chapter hath been already noted in the Chapter of the Clergy next foregoing.

cap. 38. *Escuage shall be taxed as was wont in the time of* Henry *the second.*

The Charter of King *John* hath superadded hereunto this ensuing provision. There shall be no Escuage set in the Kingdom,

doms, except for the redeeming of the King's perſon, making of his eldeſt Son a Knight, and on marriage of his eldeſt Daughter; and for this there ſhall be only reaſonable aid. And in like manner ſhall the aids of the City of *London* be ſet. And for the aſſeſſing of Eſcuage we will ſummon the Arch-Biſhops, Biſhops, Abbots, Earls, and greater Barons of the Kingdom, ſpecially by our ſeveral Writs, and will cauſe to be ſummoned in general by our Sheriffs and Bailiffs all other our Tenants in *capite*, to be at a certain day after forty days at the leaſt, and at a certain place; and we will ſet down the cauſe in all our Writs. And the matter at the day appointed ſhall proceed according to the counſel of thoſe that ſhall be preſent, although all that were ſummoned do not come. And we will not allow any man to take aid of his Free-men, unleſs for redemption of his body, and making his eldeſt Son a Knight, and one marriage for his eldeſt daughter; and this ſhall be a reaſonable aid only. *Mag. Charta.*

Thus far the Charter of King *John* concerning this point of Tax or Aſſeſſment; and if the Hiſtory ſaith true, the Charter of *Henry* the third was one and the ſame with that of King *John*, then either this was not left out in *Henry* the third's Charter, in that Hiſtorians time; or if it was omitted in the original, it was ſuppoſed to be included in the general words of the Law, as being accuſtomed in times paſt; and then theſe particulars will be emergent: Firſt, that the Aids and Eſcuage in *Henry* the firſt's time, were aſſeſſed by the ſame way with that in this Charter of King *John*; for that all the quarrel between the Lords and King *John*, was concerning the Charter of *Henry* the firſt, which the Lords ſware to maintain. Secondly, that neither Aids nor Eſcuage were granted, or legally taken, but by Act of Parliament, although the rate of them was ſettled by common cuſtom, according to the quantity of their Fee. Thirdly, that ſome Parliaments in thoſe times as concerning ſuch matters, conſiſted only of ſuch men as were concerned by way of ſuch charge, by reaſon of their tenancy, for Eſcuage only concerned the Tenants by Knight's-ſervice; and therefore thoſe only were ſummoned unto ſuch Parliaments as only concerned *M. Paris.* *M. Paris. An.* 1214, 1215. 25 *Edw.* 1. *cap.* 6. 34 *Edw.* 1. *cap.* 1. *Weſt.* 1. *c.* 36.

Mag. Charta. cerned Escuage; nor had the City of *London*, nor the Burgesses right to vote in such cases, it is said *p.* 258. And thus the Forest Laws that were made in the time of *Rich.* 1. were made by the *Hoveden.* 445. consent of Arch-Bishops, Bishops, Abbots, Earls, Barons, and Knights of the whole Kingdom; for what the great men gained, they gained for themselves and their Tenants. And the truth is, that in those times, although publick damage concerned all, yet it was ordinary for Kings to make a shew of summoning Parliaments, when as properly they were but Parliamentary meetings of some such Lords, Clergy, and others, as the King saw most convenient to drive on his own design; and therefore we find that *Henry* the third about the latter part of his Reign, when his government grew towards the dregs, he having in the Kingdom two hundred and fifty Baronies, he summoned *Gloss tit. Baron.* unto one of these Parliamentary meetings, but five and twenty Barons, and one hundred and fifty of his Clergy. Nevertheless, the Law of King *John* was still the same, and we cannot rightly read the Law in such Precedents, as are rather the birth of will than reason. Fourthly, that no aids were then granted, but such as passed under the Title Escuage, or according thereunto; for the words are, *No Escuage shall be demanded, or granted, or taken, but for redeeming the King's person, Knighting of his Son, or Marriage of his Daughter.* Nor is the way of assessing in these times different, saving that instead of all the Knights, two only are now chosen in every County; the Tenure (as it seemeth) first giving the Title of that order, and both Tenure and order now changed into that Title taken up for the time and occasion. Fifthly, that it was then the ancient custom, and so used in the time of *Henry* the first; that the advice of those then present, was the advice of the whole, and that their advice passed for a Law without contradiction, or notwithstanding the King's negative voice; for the words are, *The matter at that day shall proceed according to the counsel of those that shall be present, although all do not come*; and therefore that clause in the King's oath, *quas vulgus eligerit*, may well be understood in the future, and not in the preter-tense. Last of all, though not gathered from the Text of this Law, whereof we treat,

treat, yet being co-incident with the matter, it is obſervable, *Mag. Charta.* that though the Clergy were now in their ruffle, and felt themſelves in their full ſtrength; yet there befel a poſture of ſtate that diſcovered to the World, that the Engliſh held not the intereſt of the Clergy to be of ſuch publick concernment, or neceſſary concurrence in the government of the Kingdom, as was pretended. For the Clergy finding aſſeſſments of the Laity ſo heavy, and that occaſions of publick charge were like to multiply daily, they therefore to ſave the main ſtock, procured an inhibition from *Rome*, againſt all ſuch impoſitions from the Laity, and againſt ſuch payments by the Clergy; and in the ſtrength of this they abſolutely refuſed to ſubmit to aid *Edward* the firſt by any ſuch way, although all the Parliament had thereunto conſented. And thus having divided themſelves from the Parliament, they were by them divided from it; and not only outed of all privilege of Parliament, but of all the privilege of Subjects, into the ſtate of *præmunire*: and thus ſet them up for a monument to future times, for them alſo to act without the conſent of thoſe men, as occaſion ſhould offer. But *Henry* 3*d.* not ſatisfied with this ancient and ordinary way of aſſeſſment upon ordinary occaſions, took up that extraordinary courſe of aſſeſſment upon all the Free-men of the Kingdom, which was formerly taken up only in that extraordinary occaſion of redeeming of the King's or Lord's perſon out of captivity, and common defence of the Land from piracy; and under the Title of Daneguelt, which was now abſolutely dead, and hanged up in chains as a monument of oppreſſion. Nevertheleſs, it cannot be denyed but that in former times the Free-men were as deeply taxed, if not oppreſſed with payments to their Lords at ſuch times as they were charged over to the King in the caſes aforeſaid, as by the latter words of the Law aforeſaid of King *John* doth appear, and whereby it's probable that the inferiour Lords were gainers. The concluſion of the Charter of *Henry* the third (the ſame ſuiting alſo with the third obſervation foregoing) doth not a little favour the ſame; for it's expreſly ſet down that in lieu of the King's confirmation of the Charter of liberties aforeſaid, not *Walſing. An.* 1297.

only,

Mag. Charta. only the Arch Biſhops, Biſhops, Abbots, Priors, Earls, Barons and Knights, but alſo the Free-men, and all the Kingdom gave a fifteenth of all their moveables.

And thus have I ſummed up and compared both the copies of the grand Charters of *England*'s liberties (ſaving two particulars inſerted into the Foreſt-Laws of *Henry* the third, wherein if any thing had been new and unreaſonable, King *John* might have colour to except againſt them as extorted by force, and *Henry* the third might (as he was adviſed) plead nonage, and ſo they might have been choaked in their birth; but being all *conſuetudines*, as in the concluſion they are called; and Kings aſhamed to depend upon ſuch frivolous exceptions, it may be wondred what might move them to adventure ſo much blood-ſhed, and themſelves into ſo many troubles to avoid their own acts, unleſs the writing of them were an obligation acknowledged before the World; and they reſolving ſecretly to be under none, were loth to publiſh the ſame to all men. It's a ſtrange vanity in great men to pretend love to Juſtice, and yet not indure to be bound thereto; when as we ſee that God himſelf loves to be bound by his word, and to have it pleaded, becauſe he delights as much to be acknowledged true in performing, as good in promiſing. But neither was King *John* or *Henry* the third, of this ſpirit; fain they would undo but could not. It's true, it was at the firſt but a King's Charter of confirmation, and had Kings been patient therewith, it might have grown no bigger; but by oppoſition it rooted deeper and grew up unto the ſtature of a Statute, and ſettled ſo faſt as it can never be voided but by ſurrender from the whole body.

M. Paris. An. 1227.

Marlb. cap. 5.

Having thus ſummed up the liberties of the Subjects and Free-men of *England* under this Charter, I ſhall make ſome appendix hereunto, by annexing a few additionals in theſe times eſtabliſhed; and although they come not within the letter of the grand Charter, yet are they ſubſervient thereunto. And firſt concerning the King; and this either as he is King, or as he is Lord. As King he had theſe prerogatives above all Lords.

Prerog. Reg. cap. 9. *The King ſhall have the cuſtody of Fools and Ideots Lands*

Lands for their maintenance, and ſhall render the ſame to their heirs.

And concerning mad-men and lunaticks, the King ſhall provide a Bailiff for their maintenance, rendring account to them when they are ſober, or to their adminiſtrators. cap. 10.

It is no leſs liberty or privilege of the people that Fools and mad perſons are to be ordered by Tutors, than Children, and therefore this may be annexed to the reſt of the liberties as well as the other. Nevertheleſs, it ſeemeth that the Laws took them into their regard, in reſpect of their eſtates, which might be abuſed to the prejudice of the publick, rather than out of reſpect had to their perſons. Now becauſe there is a difference between the diſability of theſe perſons, the one being perpetual, the other temporary; therefore is there alſo by theſe Laws a difference in the diſpoſal of their eſtates; for the Tutor had a right in the diſpoſing of the one, and but a bare authority or power in providing for the other. Secondly, the perſon of the Tutor is to be conſidered: Anciently it was the next kindred, grounded, as I conceive, upon the natural affection going along with the blood; and this ſo continued in cuſtom until theſe times: for though the *Miror of Juſtice* ſaith, that *Henry* the firſt brought in that courſe of giving the cuſtody of theſe diſabled perſons to the King, as hath been formerly obſerved, *p. 149.* yet *Bracton* that wrote long after the time of *Henry* the firſt, ſpeaking of theſe kind of perſons ſaith, *Talibus de neceſſitate dandus eſt tutor vel curator*; not ſo much as mentioning the King in the caſe. And in another place, ſpeaking of ſuch as are *alieni juris*, ſaith, that ſome are under the cuſtody of their Lords, and others under their parents and friends. But let the time of the entrance of this Law be never ſo uncertain, it's now a declared Law, that the King in ſuch caſes is the common Curator or Tutor of all ſuch perſons, as he is a chief Juſtice, rendring to every one his right,

Bract. lib. 5. cap. 20.

Lib. 1. cap. 10.

The King ſhall have the Wrecks of the Sea. *Prerog. Reg cap. 11.*

What ſhall be called a Wreck, the Statute at *Weſt.* 1. declareth *Weſt 1. c. 4.*

reth, *viz.* where the ſhip ſo periſheth that nothing therein eſcapeth alive; and theſe are rather in their original committed to the King as a Curator, than given him as a proprietor, although that cuſtom hath ſince ſettled a kind of right, which may perhaps be accounted rather a Title by eſtoppel. For the fundamental ground is, that the right owner cannot be manifeſted, and therefore the King ſhall hold it; and if the right owner can be manifeſted, the King ſhall hold it till the owner doth appear.

Marlb. cap. 17 *The heir in Socage-Tenure, ſhall have an Action of Waſt, and an account againſt his Guardian for the profits of the Lands and Marriage.*

Bracton, lib. 2. *cap.* 37. The heir in Socage being under Age ſhall alſo be under cuſtody of ſuch guardian of the next kinred, who cannot challenge right of inheritance in ſuch Lands ſo holden, as if the Lands deſcended from the Father's ſide, the Mother, or next of the kinred of the Mothers ſide ſhall have the cuſtody; and ſo if the Lands deſcend from the Mother, the Father, or next kinred of the Father's ſide ſhall have the cuſtody. And this cuſtody bringeth with it an Authority or power only, and no right, as in caſe of the heir in Knight-ſervice; and therefore cannot be granted over as the Wardſhip in Knight-ſervice might, but the guardian in Socage remaineth accomptant to the heir, for all profits both of Land and marriage. The full age of Tenant in Socage, is ſuch Age wherein he is able to do that ſervice, which is 14 years, for at ſuch Age he may be able by common repute to aid in Tillage of the ground, which is his proper ſervice. But the Son of a Burgeſs hath no ſet time of full Age, but at ſuch time as he can tell money, and meaſure cloath, and ſuch work as concerns that calling.

Merton. c. 1. *Widows deforced of their Dower of* Quarentine, *ſhall by Action recover damages till they recover their Dower.*

They ſhall alſo have power to deviſe their crop ariſing from her Dower.

cap. 2. *Bracton, lib.* 2. *cap.* 40. It was uſed that the heir ſhould have the crop with the Land, but

but this Statute altered that former uſage, and yet ſaved the Lord's liberty to diſtrain if any ſervices were due.

Writs de conſimili caſu *granted in caſes that fall under the ſame Law, and need the ſame remedy, and ſuch Writs, ſhall be made by agreement of the Clerks in the Chancery, and advice of ſuch as are skilful in the Law.* Weſt. 2. c. 24.

It was none of the meaneſt liberties of the Free-men of *England*, that no Writs did iſſue forth againſt them, but ſuch as were anciently in uſe, and agreed upon in Parliament. And it was no leſs a grievance and juſt cauſe of complaint, that Kings uſed to ſend Writs of new impreſſion to execute the dictates of their own wills, and not of the Laws of the Kingdom, as the complaints of the Clergy in the times of *Henry* the third do witneſs. Nevertheleſs, becauſe many mens caſes, befel not directly within the Letter of any Law for remedy, and yet were very burthenſome, for want of remedy it's provided by this Law, that in ſuch emergent caſes that do befal within the inconvenience, ſhall be comprehended within the remedy of that Law. *M. Paris addit. Artic.* 44.

Aid to make the Son of the Lord a Knight, and to marry his eldeſt Daughter, ſhall be aſſeſſed after the rate of twenty ſhillings for a Knights Fee; and twenty ſhillings for 20 *pounds in yearly value of Socage-Tenure.* Weſt. 1. cap. 36

The uncertainties of Aids are by this Law reduced and ſettled, as touching the ſum, and thereby delivered the people from much oppreſſion, which they ſuffered formerly. Nor was only the particular ſum hereby, but alſo the Age of the Son when he was to be made a Knight, *viz.* at the age of fifteen years; too ſoon for him to perform Knight-ſervice, but not too ſoon for the Lord to get his money. And the Daughter likewiſe was allowed to be fit for marriage at ſeven years of Age, or at leaſt to give her conſent thereto, albeit that in truth ſhe was neither fit for the one or other: and therefore it muſt be the Lord's gain that made the Law, and it was not amiſs to have the aid before hand, though the

marriage ſucceeded not for many years after; and if the Lord died in the interim, the Executors having aſſets paid it, or otherwiſe his heir.

CHAP. LXVIII.

Of Courts, and their proceedings.

BEſides the Courts of Juſtices *itinerant*, which were ancient as hath been ſaid, other Courts have been raiſed of later birth, albeit even they alſo have been of ancient conſtitutions, and divers of them *itinerant* alſo, and ſome of them ſettled in one place. The work of the Juſtices *itinerant* was univerſal, comprehending both the matters of the Crown and Common-pleas. That of *oyer* and *terminer* is only of Crown-pleas originally commenced, and enquired of by themſelves, and granted forth upon emergent crimes of important conſequence that require ſpeedy regard and reformation. Juſtices of Gaol-delivery have a more large work, that is, to deliver the Gaols of all criminal offenders formerly indicted or before themſelves. Juſtices of Aſſize and *Niſi prius* are to have cogniſance of Common-pleas only, and for the moſt part are but for enquiry. All which, ſaving the Juſtices *itinerant* in ancient uſe, were inſtituted about theſe times, and therewith ended both the work and common uſe of the ancient *iters*; and yet all theſe later Courts jointly conſidered have not the like comprehenſive power that the *iters* had, for they had the power of hearing and determing all cauſes, both of the Crown and Common-pleas, albeit in a different manner; that is to ſay, in the firſt times promiſcuouſly united into one and the ſame perſon; but ſoon after the Norman times, and more clearly in the time of *Henry* the ſecond, that power was divided into ſeveral perſons, ſome ſitting upon the Common-pleas, others upon the Crown-pleas: The Judges of theſe journeying courts were ſpecially aſſigned by the King, as in the caſe of the Gaol-delivery

delivery, or settled by the Law upon the Judges of both benches at *Westminster*, as in case of *oyer* and *terminer*, and of the Assizes or *Nisi prius*, saving that in the last case they were associated with Knights in the Counties for the taking of Assizes. *West. 2. cap. 29.* *Ibid. c. 30.*

Now concerning the Courts that were settled: some were settled or annexed to the King's personal residence, as the Chancellour's Court; for in these times it began to have a judiciary power of eminent stature, and growing out of the decays of the great chief Justice of *England*. Then also the King's-Bench was annexed by the same Law unto the King's Court or personal residence, as it anciently ever had that honour; although it seems the endeavours were to make it like the Common-pleas in that particular. Another and last Court that was settled in this manner, was the Marshal's Court, which in the original only concerned the King's houshould, but afterwards compassed in a distance of the neighbouring places, because the King's attendants were many in those times; when as the Courts of Justice continually attended on his person: and this precinct was called the Verge; and all cases of debt and covenant, where both parties were of the Houshold, and of Trespasses *vi & armis*, where one of them was of the Houshold, were handled in the court of the Verge, or the Marshal's Court. And inquests of death within the same shall be taken by the Coroner of the County, with the Coroner of the Houshold. Other Courts were rural, and affixed also to some certain place, either of the County or Town, or other particular place. That of the County suffered in these times great diminution, even almost to destruction, by a Law restraining the power thereof only to Trespasses of 40 *s.* value or under; for though formerly the King's Justices incroached upon the County-Courts and contracted suits before themselves, which by the ancient Law they ought not; yet it was ever illegal, and the County-Courts held their right till this Law was made, which kept under those inferiour Courts, and made them of less account than formerly. Nevertheless, the King's *Justicies*, or Writ to the Sheriffs, oftentimes enableth the inferiour Court *Fleta.* *Artic. sup. cart. cap. 15.* *5 E. 4. fo. 129* *Artic. sup. cart. cap. 3.* *Stat. Gouc. cap. 8.*

to

to have cogniſance of caſes of greater value. Laſtly, a rule
Weſt. 1 cap. 23. was ſet to the ſmaller Courts of Corporations, Fairs, and Markets, *viz.* that no perſon ſhould be ſued in any of them, which was not a debter or pledge there.

CHAP. LXIX.

Of Coroners, Sheriffs, and Crown-pleas.

Coroners.
Weſt. 1. cap. 10.

Coroners ſhall be choſen in the County from the wiſeſt, greateſt, and chief men of the Countrey.

Of theſe Officers formerly hath been ſpoken, as touching their election, qualification, and work: this Law brought in no change of any former Law, but only of a former cuſtom gained by theſe degenerating times, which brought men into place that were far unfit, who otherwiſe of poor and mean condition maintained themſelves by bribery and extortion, and being found guilty had not ſufficient to give recompence. This Law therefore revives the firſt Law, & holds theſe men to their work of taking Inqueſts and Appeals, by Indenture between themſelves and the Sheriff, and theſe were to be certified at the next coming of the Juſtices.

Sheriffs.
Artic. ſuper cart. cap. 9.

The Free-holders in every County, if they will, ſhall elect their own Sheriff, unleſs the Sheriffwick be holden in Fee.

Mirror. cap. 1. Sec. 3.
Stat. de v. c. 9 E. 2.

This was indeed the ancient cuſtom: as the Officers of the Kingdom were elegible by the Common-council of the Kingdom, ſo were alſo the Officers of the County, choſen by the County. But within a few years in the time of *Edward* the ſecond, comes another Law; that the Sheriffs ſhall be appointed by the Chancellour, Treaſurer, Barons of the Exchequer, and the Juſtices, which Law was made in favour of the people, as by the file of that Statute doth more fully appear: for though at the firſt bluſh it may ſeem a privilege loſt by the

the Free-men, that these great men should have the election of the Sheriff; yet it proved a great advantage to the common quiet of the people in those times of parties, and was so apprehended: Otherwise as the case stood in those days of *Edward* the second, It was no time for him to gain upon the peoples liberties. Nor had the Statute of *Articuli super cartas*, whereof we now treat been penned with these words, if they will; and questionless in these days we now live in, if the people had but a little tast of this seeming liberty of electing Sheriffs in the County-court, as formerly it was used, it would be soon perceived that the election of these chief Officers were better disposed in some other hand, if rightly pursued.

Chancemedly.
Marlb. cap. 25.

Homicide by misfortune shall not be adjudged murther.

That the Saxons made difference between homicide by misfortune, and that which was done *felleo animo*, or with a spirit of gall, formerly hath been shewed; now what it was that altered the case, I cannot say, unless the violence, cruelty, and oppression of the times: formerly all kind of Man-slaughter was finable, I mean in the Norman times, and so might more rationally be ranked into one degree; but now the punishment began to change from forfeiture of estate, and loss of member, to death, and forfeiture of estate; and therefore it was more necessary to make the difference in the penalty, seeing in the fine formerly, a difference was observed; and this difference to assert by a Law that might limit the invenomed spirits of the Judges of those days.

Robbery punished by death.

Robbery.

This crime hitherto was punished by fine and loss of member, at the utmost, but is now made capital, and punished with death. One example whereof, and the first that story maketh mention of, we find of an Irish Nobleman in the days of *Henry* the third, who suffered death for piracy; and it was a Law that then, though rigorous, yet seasonably was contrived to retard the beginnings, and hasten the conclusion of a Civil War in a Nation

Nation who value their eſtates and liberties above their own lives.

Rape. West. 1. cap. 13. ***Rape upon the complaint of the party violated, made within forty days, ſhall have right. If the delinquent be convicted without ſuch complaint made he ſhall be fined and impriſoned.***

Before this Law, this crime was but finable, unleſs the fact was committed upon a Virgin, for then the member was loſt. And this was the Saxons Law; but the Normans inflicted the loſs of the member upon all delinquents in any Rape. Nor was this made Felony by any Law or cuſtom that I can find, till about theſe days. It's true, that *Canutus* puniſhed it *capitis æſtimatione*, by way of compenſation, which rather gives a rule of damages to the party wronged, than importeth a puniſhment inflicted for an offence done againſt the Crown, as if it were thereby made capital. But for the more certainty of the penalty, another Law provideth, that if the Rape be *West. 2. cap. 34* committed without the womans conſent ſubſequent, ſhe may have an appeal of Rape. And though a conſent be ſubſequent, yet the delinquent upon indictment found ſhall ſuffer death, as in the caſe of appeal. But if a Wife be carried away with the goods of her Husband, beſides Action of the party, the King ſhall have a fine. If the Wife elopeth ſhe ſhall loſe her Dower, if ſhe be not reconciled before her Husband's death. All which now recited proviſoes are comprehended together in one Chapter, and yet the Chapter is, *partee per feſſ*, French and Latin: ſo far thereof as concerneth death was written in French, being the moſt known Language to the great men in general, many of whom were French, by reaſon of the intereſt that *Henry* the third had with *France* in his late Wars againſt the Barons. It was therefore publiſhed by way of caveat, that no perſon that underſtood French might plead ignorance of the Law that concerned their lives. The reſidue of that Chapter was written in Latin, as all the other Laws of that Parliament were, upon grounds formerly in this diſcourſe noted. *p. 152.* One proviſo more remaineth, which is alſo comprehended in the

the same Chapter with the former, *viz. Any person that shall carry away a Nun from her house, shall suffer imprisonment for three years, and render damages to the house.* This crime was formerly only inwombed in the Canon-Law, and now born and brought forth into the condition of a Statute-Law, rather to vindicate the right of the Free-men, than in any respect had to the Clergy, who had been very bold with the liberty of the Free-men in this matter; for Arch-Bishop *Peckham*, not a year before the making of this Law, for this offence had excommunicated Sir *Osborn Gifford*, nor could he get absolution but upon his penance: first he was discipled with rods three times, once in the open Church at *Wilton*, then in the Market-place at *Shaftsbury*, and lastly in the publick Church there; then he must fast divers months. Lastly, he must be disrobed of all Military habiliments, *viz.* Guilt Spurs, Sword, Saddle, golden Trappings, and to use no brave garments, but russet, with Lamb and Sheepskins; to use no shirt, nor take up his order again, until he had spent three years Pilgrimage in the Holy Land: and unto this penance the Knight by oath bound himself. A strange power, and to repress which it was time for the people to look about them, and rather to punish delinquents themselves, than to leave it to the will of such men as never had enough.

Antiq. Brit. fo. 197.

Concealment, or neglect of apprehending of Felons, punished by fine and imprisonment.

Concealment of Felons. West. 1. cap. 9.

In those ancient times, pursuits of Felons with hue and cry were made by Lords of Mannors, Bailiffs of Liberties, Sheriffs, and Coroners, whereas now they are made by Constables. See more in the Chapter of peace. Escapes also were punished with fine and imprisonment: and in some places the Lord had the fine, in other places the Sheriff, and in some cases the King; yet in no case was any fine assessed or taken till the Trial before the Justices.

West. 1 cap. 3.

Persons defamed for Felony, not submitting to Trial by Law, shall be committed to close and hard imprisonment.

Defamed Felons. West. 1. cap 1.

It hath been accounted an extream construction of this Law, and questionless so it is, that this Law should warrant that punishment of pressing to death, which hath been of later times more constantly used than former times ever knew of; for though it be granted that some trick of torture was sometimes used, even before the Normans times, and so might now and then leave some few examples after the Norman times, yet did the Law never patronize such courses, especially if the death of the party suspected ensued thereupon, but accounted it Man-slaughter. And the end of this Law was not to put a man to death, but to urge him to confess; and so *Briton* saith, such as will not submit to Trial, shall be put to penance till he shall pray to be admitted thereunto; and therefore the penance then used was such as did not necessarily infer death; nor was it a final Judgement in the Trial, but only a means thereto: and therefore it might rather consist in denyal of conveniences than inflicting of pain. Now in what cases it was used, may be understood from the manner of the Indictments in those days, whereof (besides appeals by the party) some were of particular fact done; others only of a Fame: and it may be conceived that the course in the second was, that if a man would not submit, but would stand mute, he was put to this kind of imprisonment; for the discovering Law, was by *Henry* the third taken away. But if the delinquent was positively accused of a Felony, and thereupon indicted by a witness of the Fact, and then if the delinquent would not submit to his Trial by Law, in such case the final Judgement was to die, *Onere, fame, &c.* because in the one there was a Fact affirmed against him by a witness, and in the other only a fame or suspicion, which is not pregnant against the life of a man. But this manner of indictment being now laid aside, and all proceedings being upon a Fact affirmed against the party, I conceive this Law of no use at all in these days.

Mirror. cap. 1. Sec. 9.

Britton, cap. 4. Sect. 24.

Glanv. lib. 10. cap. 1.

Bail. *Westm.* 1 c. 15. *Bail shall not be allowed to Out-laws forejured, Thieves taken in the Act, notorious Thieves, appealed persons, burners of houses, breakers of prison; false coiners,*

coiners, counterfeiters of the Broad seal, prisoners upon excommunication, open malefactors, and Traitors against the King.

The six first are in nature of persons attainted either upon their own confession, or such manifest evidence as in common reason cannot be gainsaid; all which were before this Law under bail; yea the last of all, although the most heinous of all, was in the same condition. As touching breakers of prison, in these times it was Felony, for what cause soever they were committed; and therefore their imprisonment was without bail, for who so makes no conscience of breaking the prison, his credit will little avail: yet it must be acknowledged, that the Law imprisoned few without bail in those foregoing times, but in case of Felony or execution; but afterwards the cases of commitment being ordinary, even in matters of mean process, and because mens credits waxing weak by the weakness of their estates, now wasted by the civil Wars; therefore in *Edw.* the second's time a Law was made to restrain the Felony in such cases, only to the breach of prison by such as were committed for Felony. And as touching imprisonment upon excommunication, it's manifest that within five years before the making of this Law, it was complained that such were set at liberty by the King's Writ *de homine replegiando*, without the Bishop's consent. But now the Clergy had gotten the day of the Law, which did much decline from that guard of imprisonment, but hated perpetual imprisonment. Nor was this complaint grounded upon any other Law than that of the Canon, for the common Law ever held the supreme cognisance of Excommunication within it's own power, as upon the Writ *de quare excommunicato*, may appear. Other crimes are yet also by this Law allowed bail, such as are persons indicted of Larceny, before Sheriffs, *&c.* persons imprisoned upon slight grounds, Receivers, and Accessories before Felony, Trespassers, persons appealed by provers, after the death of the approvers. If bail be granted otherwise than the Law alloweth, the party that alloweth the same, shall be fined, imprisoned, render damages, or

Glanvil. lib. 14 cap. 1.

Addit. M. Paris.

forfeit his place, as the case shall require. And thus the iniquity of the times was so great, as it even forced the Subjects to forgo that which was in account a great liberty, to stop the course of a growing mischief.

Spreaders of false news. *West. 1. cap. 34.*

Publishers of false news, whereby discord or slander may arise between the King and his people, shall be imprisoned till he produce the Relator.

It is therefore an offence against the Crown, to procure or maintain an ill conceit in the King of the people, or an ill conceit in the people of the King; and it's as well an offence against the Crown for the King to conceive ill of his people, as for them of him. But all must be grounded upon falshood; for truth respects no Man's person; and all Men are equally bound by that woe, if they call good evil, or evil good; although difference must be made in the manner of representation. And upon this ground of maintaining strife, was a Law made also against conspiracy to make or maintain indictment, suit, or quarrel, and it was likewise finable.

33 Edw. 1.

Merton. c. 3.

Redisseisors and postdisseisors found upon verdict before the Sheriff, Coroners, and Knights, shall be imprisoned.

Formerly redisseisin was under no other Law than that of disseisin, but by this Law made a matter belonging to the Crown, and tryed before the same Judges that had the power of enquiry of all offences against the Crown. The penalty of imprisonment in this case was to be without bail, but only by the King's Writ *de homine replegiando*; and yet even thus the penalty was not sufficient to restrain the offence, and therefore a Law was made to abridge the power of that Writ, as touching such offender, and they became irremediable as touching their liberty by that Writ, besides that upon recovery had against them they lost double damages.

Marlb. cap. 3.

West. 2. c. 26.

Trespassers upon Parks. *West. 1. cap. 20*

Trespassers in Parks and Fish-ponds convicted within a year and a day shall render damages, suffer imprisonment for three years, and give security of good behaviour.

viour for time to come. If any Beasts be taken in a Felonious manner, he shall be proceeded against as a Robber.

From the times of King *Steven*, the Lords and great men endeavoured to advance their power and greatness, so high above the meaner sort of Free-men, as they made Kings continually jealous of their power. Castles had been a bone of long contention between them, but they being for the most part taken away, the strife was about prisons, and power to imprison offenders; and that also after much opposition they laid aside: yet the violence of these times being such, as (though Felonies were somewhat dreaded) Trespasses of the highest nature were little regarded, such as were riotous hunting in their Parks, and fishing in their waters. The Lords and great men made it their last request, that at least in such cases, they might have power to imprison such as they found so Trespassing; but this was also denyed them, though by *Henry* the third in his first time, when as yet the government was not worsted by projects of arbitrary power, or corrupt counsels of Foraigners, nor himself a man able to sway with the Lords in matters that were of doubtful prerogative. And to speak indifferently, it's better for the liberty of the subject, that the power of imprisonment should be regulated only by the King's Writ ordered by Law, than by the warrants of great men, especially in their own cases; and therefore in this matter the King's prerogative was a patron to the Free-mens liberty. Nevertheless, these great men give not thus over their game, for though in times of publick calamities, little place is left for pleasure to any man; yet when times are grown to more quiet, pleasure revives, and the great men renew their motion; and though they could not obtain prisons to their own use, as they endeavoured at the meeting at *Merton*; yet now they obtain the King's prisons to the use of a Law that was as good as their own, and thereby satisfied their own displeasure for the loss of their pleasure. And yet this Law sufficed them not, but they obtain a further privilege, that such persons as are found so trespassing, and refusing to submit, may be killed without peril of Felony. *Merton cap. 11* *An. 21. Ed. 1.*

CHAP.

CHAP. LXX.

Of the Militia during these Kings Reigns.

THe Souldiery of *England* may be considered, First in regard of the persons. Secondly, their Arms. Thirdly, their service. The persons were as formerly, not only such as were *milites*, or Tenants in Knight-service, but also such as served at the Plow; and concerning them both, it is to be considered what the Law made by *Edward* the second, holdeth forth.

Stat. de Milit. 1 E. 2. ***All such as ought to be Knights, and are not, shall be distrained to undertake the weapons of Knight-hood, if they shew not cause to the contrary.***

Regularly all Tenants by Knight-service ought to be Knights, but *de facto*, were not; so as in these times there was a further work to make a man a Knight than his bare Tenure; for such only were *milites facti*, who had both Lands sufficient to maintain the Arms and state of a Knight; and also a body fit to undertake the service in his own person, and whereof he had given sufficient proof in the field. Others that had Land either had not sufficient maintenance or not habiliments of person, and as not expected were laid aside; of this sort were many by reason of the late Civil Wars, in which they had much impaired both their bodies and estates: This rendred the strength of the Kingdom and Militia so much decayed, and the minds of men so wearied, that they began to love ease before the times would brook it, and a cessation from Arms before they had any mind to peace. The Parliament espyed the danger, and how necessary it was for the people to be well armed in these times of general broil, and upon that ground allowed this Law to pass, that all such as had Lands worth 20 *l.* yearly besides reprizals should be ready not to be Knights (nor under the favour of others is there any ancient precedent to warrant it)

it) but to find or to enter the field with the Arms of a Knight, or provide some able person to serve in their stead, unless they were under 21. years of Age, and so not grown up to full strength of body; nor their Lands in their own possession but in custody of their Lords or Guardians. Nevertheless, of such as were grown to full age, yet were maimed, impotent, or of mean estate, and Tenants by service of a Knight, it was had into a way of moderation, and ordered that such should pay a reasonable fine for respit of such service; nor further as concerning their persons were they bound. But as touching such that were under present only, and not perpetual disabilities of body upon them incumbent, as often as occasion called, they served by their deputies or servants: all which was grounded not only upon the Law of *Henry* the second, but also upon common right of Tenure.

The Arms that these men were to find, are said to be those belonging to a Knight, which were partly for defence, and partly for offence; of the first sort were the Shield, the Helmet, the Hauberk, or Brest-plate, or coat of Mail: Of the second sort were the Sword and Lance; And unto all a horse must be provided. These Arms, especially the defensive, have been formerly under alteration, for the Brest-plate could not be worn with the coat of Mail, and therefore must be used as occasion was provided of either; and for this cause the service of a Knight is called by several names; sometimes from the Horse, sometimes from the Lance, sometimes from the Helmet, and not seldom from the coat of Mail.

The power of immediate command, or calling forth the Knights to their service, in it's own nature was but ministerial and subservient to that power that ordered War to be levyed: and therefore, as in the first Saxon government under their Princes in *Germany*, so after under their Kings, War was never resolved upon, but if it were defensive, it was by the council of Lords; if offensive, by the general vote of the grand Council of the Kingdom; so by vertue of such order, either from the Council of Lords, or grand Council, the Knights were called forth to War, and others as the case required, summoned *Tacitus.*

moned to a rendezvous, and this instrumental power regularly rested in the Lords, to whom such service was due; and the Lords were summoned by the Lord Paramount, as chief of the Fee, of which their Tenants were holden, and not as King or chief Captain in the Field; for they were not raised by Proclamation, but by summons issued forth to the Sheriff, with distress; and this only against such as were within his own Fee, and held of the Crown. The King therefore might have many Knights at his command, but the Lords more, and if those Lords failed in their due correspondency with the King, all those of the inferiour orb were carried away after them, so the King is left to shift for himself as well as he can; and this might be occasioned not only from their Tenures, by which they stood obliged to the inferiour Lords, but probably much more by their popularity, which was more prevalent, by how much Kings looked upon the Commons at a further distance in those days, than in after times, when the Commons interposed intentively in the publick government. And thus the Horse-men of *England* becoming less constant in adhering to their Soveraign in the Field, occasioned Kings to betake themselves to their Foot, and to form the strength of their battels wholly in them, and themselves on foot to engage with them.

One point of liberty these Soldiers by Tenure had, which made their service not altogether servile, and that was, that their service in the field was neither indefinite, nor infinite, but circumscribed by place, time, and end. The time of their service for the continuance of it was for a set time, if it were at their own charges: and although some had a shorter time, yet the general sort were restrained to forty days. For the courage of those times, consisted not in wearying and wasting the Soldier in the field by delays, and long work in wheeling about, and retiring, but in playing their prizes like two combatants of resolution to get victory by valour, or to die. If upon extraordinary occasions the War continued longer, then the Tenant served upon the pay of the common purse. The end of the service of the Tenant (*viz.* their Lord's defence in the

the defence of the Kingdom) ſtinted their work within certain bounds of place, beyond which they were not to be drawn, unleſs of their own accord: and theſe were the borders of the Dominion of the Crown of *England*, which in thoſe days extended into *Scotland* on the North, and into a great part of *France* on the South. And therefore the Earl Marſhal of *England* (being by *Edw.* 1. commanded by vertue of his Tenure to attend in perſon upon the Standart under his Lieutenant that then was to be ſent into *Flanders*, which was no part of the Dominion of *England*) refuſed, and notwithſtanding the King's threats to hang him, yet he perſiſted, ſaying, *he would neither go nor hang.* Not only becauſe the Tenants by Knight-ſervice are bound to the defence of their Lord's perſons, and not of their Lieutenants; but principally becauſe they are to ſerve for the ſafety and defence of the Kingdom; and therefore ought not to be drawn into foraign Countries. Nor did the Earl Marſhal only this, but many others alſo both Knights and Knights fellows, having twenty pounds *per annum*; for all theſe with their arms were ſummoned to ſerve under the King's pay in *Flanders*. I ſay multitudes of them refuſed to ſerve, and afterwards joyned with the reſt of the Commons in a Petition to the King, and complained of that ſummons, as of a common grievance, becauſe that neither they nor their Anceſtors were bound to ſerve the King in that Countrey, and they obtained the King's diſcharge under his broad Seal accordingly. The like whereunto may be warranted out of the very words of the Statute of Mortmain, which was made within the compaſs of theſe times, by which it was provided, that in caſe Lands be aliened contrary to that Statute, and the immediate Lords do not ſeiſe the ſame, the King ſhall ſeiſe them, and diſpoſe them for the defence of the Kingdom, *viz.* upon ſuch ſervices reſerved as ſhall ſuit therewith, as if all the ſervice of a Knight muſt conduce thereto; and that he is no further bound to any ſervice of his Lord than will conſiſt with the ſafety of the Kingdom. This was the doctrine that the ſad experience of the later government of Kings in theſe times, had taught the Knight-hood of *England* to hold for the future Ages.

Walſing fo. 69. & 71.

Stat. Mort. 7 *Edw.* 1.

Stat. de Militibus.

No Tenant in ancient demeſnes, or in Burgage, ſhall be diſtrained for the ſervice of a Knight.

Clerks and Tenants in Socage of other Mannors, than of the King, ſhall be uſed as they have been formerly.

Tenants in ancient Demeſne, and Tenants in Burgage are abſolutely acquitted from Foraign ſervice; the one becauſe they are in nature of the King's Husbandmen, and ſerved him and his Family with victual: the other becauſe by their Tenure they were bound to the defence of their Burrough, which in account is a limb or member of the Kingdom, and ſo in nature of a Caſtle-guard. Now as touching Clerks and Tenants in Socage holding of a Subject, they are left to the order of ancient uſe appearing upon record. As concerning the Clergy, it's evident, by what hath been formerly noted, that though they were importunate to be diſcharged of the ſervice military, in regard that their profeſſion was for peace, and not for blood, yet could never obtain their deſire; for though their perſons might challenge exemption from that work, yet their Lands were bound to find arms by their deputies, for otherwiſe it had been unreaſonable, that ſo great a part of the Kingdom as the Clergy then had, ſhould ſit ſtill and look on, whilſt by the Law of nature every one is engaged in his own defence. Nor yet did the profeſſion of theſe men to be men for peace, hold always uniform; ſome kind of Wars then were holden ſacred, and wherein they not only adventured their eſtates, but even their own perſons; and theſe not only in a defenſive way, but by way of invaſion, and many times where no need was for them to appear. Tenants in Socage alſo, in regard of their ſervice, might plead exemption from the Wars: For if not, the Plough muſt ſtand ſtill, and the Land thereby become poor and lean: Nevertheleſs a general ſervice of defence of the Kingdom is impoſed upon all, and Husbandmen muſt be Soldiers, when the debate is, who ſhall have the Land; in ſuch caſes therefore they are, *evocati ad arma*, to maintain and defend the Kingdom, but not compellable to Foraign ſervice, as the Knights were, whoſe ſervice conſiſted much in defence of their Lord's perſon,

perſon, in reference to the defence of the Kingdom; and many times policy of War drew the Lords into Arms abroad, to keep the enemy further from their borders, and the Knights then under their Lord's pay went along with them; and therefore the ſervice of Knight-hood is commonly called *ſervitium forinſecum.* Of theſe Socagers did ariſe, not only the body of Engliſh Foot-men in their Armies, but the better and more wealthy ſort of them found Arms of a Knight, as formerly hath been obſerved, yet always under the pay of the common purſe; and if called out of the Kingdom, they were meer Voluntiers; for they were not called out by diſtreſs as Knights were, becauſe they held not their Land by ſuch ſervice; but they were ſummoned by Proclamation, and probably were muſtered by the high Conſtables in each Hundred, the Law nevertheleſs remaining ſtill entire, that all muſt be done not only *ad fidem Domini Regis*, but alſo *Regni*; which was diſputed and concluded by the Sword: for though Kings pretended danger to the publick, oftentimes to raiſe the people; yet the people would give credit as they pleaſed: or if the King's Title were in queſtion, or the peoples liberty, yet every man took liberty to ſide with that party that liked him beſt; nor did the King's proclamation ſway much this or that way.

Concil. Brit 406. *p. 206*

It's true, that precedents of thoſe times cry up the King's power of arraying all ſhips and men without reſpect, unleſs of Age, or corporal diſability: but it will appear that no ſuch array was, but in time of no leſs known danger from abroad to the Kingdom, than eminent, and therefore might be wrought more from the general fear of the enemy, than from the King's command; and yet thoſe times were always armed in neighbouring Nations, and Kings might have pretended continual cauſe of arraying. Secondly, it will no leſs clearly appear, that Kings uſed no ſuch courſe but in caſe of general danger to the whole Kingdom, either from Foraign invaſion, as in the times of King *John*, or from inteſtine broils, as in the times of *Henry* the third, and the two *Edwards* ſucceſſively: and if the danger threatned only one coaſt, the array was

21 *E. 1. rot.* 81.

limited only to the parts adjacent thereunto. Thirdly, it
23 E. 1. Memb. 5. seemeth that general arrays were not levyed by distress till the time of *Edward* the first, and then only for the rendezvouz at the next Sea-coast, and for defence against foraign invasion, in which case all Subjects of the Kingdom are concerned by general service: otherwise it can come unto no other account than that Title prerogative, and therein be charactered as a trick above the ordinary strain. Fourthly, those times brought forth no general array of all persons between the ages of sixteen years and sixty, that was made by distress in any case of civil War, but only by Sheriffs summons; and in case of disobedience by summons to appear before the King and his Council; which sheweth, that by the common Law they were not compellable or punishable. Lastly, though these arrays of men were sometimes at the charge of the King, and sometimes at the Subject's own charge, yet that last was out of the rode way of the Subject's liberty, as the subsequent times do fully manifest. And the like may be said of arrays of Ships, which however under command of Kings for publick service, were nevertheless rigged and paid out of the publick charge. The sum of all will be, that in cases of defence from foraign invasion Kings had power of array according to the order of Law; if they exceeded that rule, it may be more rightly said, they did what they would, than what they ought.

CHAP. LXXI.

Of the Peace.

WAr and Peace are two births by several venters, and may like the day and night succeed, but can never inherit each to other; and for that cause they may claim to belong to one Father, and that one and the same power should act in both: and yet it's no good maxim that he that is the chief Commander

mander in War ought to be the chief in the order of peace. For it naturally befalls that War, especially that which we call civil War, like some diseases in the body, does rather breed ill humours than consume them, and these must be purged by dieting the State, and constant course of Justice, unto which the rugged Waves of War have little or no affinity, if not enmity: Nevertheless, the wisdom of our Ancestors thought it most meet to keep their Kings in work, as well in time of Peace, as of War; and therefore as they anciently referred the principal care thereof to the Lords, who together with certain select persons in every County, did administer Justice in several *Iters* or circuits: so when Kings had once gotten the name of being chief in civil affairs, as they had it in martial; they soon left the Lords behind them (who also were willing enough with their own ease) and had the name of doing all, notwithstanding it was done by advice of the Lords, and directory of Ministers, or Commissioners thereto deputed. And thus that peace which formerly passed under the Titles of *Pax Domini, pax vicecomitis*, it is *pax Regni*, became by eminency, swallowed up in that which was called the King's peace, and the Justices called the King's Justices, and himself flattered into that Title of Fountain of Justice, which belongeth only to him that is The Most High, or Chief Law-giver.

The manner how this honourable care of the safety and peace of the Kingdom was employed, may be referred to a double consideration, the one in execution of Justice upon delinquents, the other in preventing occasions of offence or delinquency, by means whereof the publick peace might be endangered. The first was acted diversly according to the present sence of affairs; for what was at first done by the Princes in their circuits, with one hundred of the Commons called *Comites*, and that done *per pagos vicosque* was afterwards done by *itinerant* Judges, sent from the King for the greatest matters, and by Lords in their Leets, Governours, or chief Magistrates of Towns in their Courts, and Sheriffs in their Torns, as *Judices stati* for the ease of the people in matters of less moment. I say I conceive it was in the Torn, for I *Tacitus.*

suppose

suppose no emergent Court, taken up upon occasion, could by
52 Hen. 3. Marlb. cap. 25. the Law draw a necessity of a sudden appearance of all above twelve years of Age at the same, and for the same cause it seemeth, that one certain Torn every year was holden for inquiries of homicide, unto which all above twelve years of Age were to come, except Barons, Clergy and Women, or otherwise, all such had been bound to attendance on every Torn. Nevertheless, the work of the Torns continued not to hear and determine, as anciently they had done. For in *Henry* the third's
Mirror cap. 2. Sec. 9. time, and formerly, divers men had prisons to their own use, some as Palatines, others as Lords of Franchise, and others by power and usurpation, and had the benefit of all fines incident;
Mag. cart. cap. 19. and by this means many were fined that deserved it not, and some also that deserved worse: to prevent which evil, *Henry*
Glocest. cap. 8. West. 1. cap. 3. the third took away that power of holding Crown-pleas. And *Edward* the first took away their power to determine escapes, and left them only the power of inquiry, and to certifie at the next coming of the Justices.

But these injurious times had holden too long to be forgotten, or laid aside by such cool pursuit. Men were still ordinarily imprisoned, and so continued oftentimes, till the coming of the Justices *itinerant*. For whereas in case of bloodshed, the Writ *de odio & atia* was a remedy; the other had no remedy but by procuring a Commission of *Oyer* and *terminer*, which
Stat. Wint. 13 Edw. 1. ordinarily was a cure worse than the hurt. As a remedy hereof *Edward* the first found out the new way of making Justices of peace, as may appear by the Statute at *Winton*, which law being purposely made for the conserving of the peace, providing for penalty of crimes already committed (as well as for the suppressing of future) ordaineth that offences against that Law shall be presented to Justices assigned to enquire thereof; and though these at the first might be *itinerant*, yet it soon made way to resiant. And before that Statute it seemeth the King had found out the way, if that note be true which is left revived into memory by that honourable reporter, which relating to the sixth year of *Edward* the first saith, that then *prima*
Coke Inst. 4. p. 176. *fuit institutio justiciariorum pro pace conservanda.* And yet some

semblance

ſemblance there is that it was yet more ancient, even in the time of *Hen.* 1. if I miſtake not the ſence of that clauſe in his laws concerning vagabonds; he ordereth that they ſhall be carried *Juſticiæ quæ præeſt*, although the language be not ſo Clerkly as to ſpeak the ſence out. Now though their work as yet was but in trial, and they were onely truſted with power of inquiry, yet it induced a new way wherein the Sheriffe was not ſo much as intruſted to intermeddle, and which not onely intermitted the courſe of his proceedings in ſuch matters, but alſo led the way to the diſpoiling of the Sheriff's Torn, and Lord's Leets, of that little remainder that was left them of judicatory power in matters that were againſt the peace, and made their inquiſitory power leſs regardful, and eaſed the Juſtices *itinerant* of much of their work, in regard they were ſpeedily to certifie up to the King, and ſo theſe matters ſhould be determined in Parliament, according as thoſe Juſtices were elected in Parliament, who as it ſeems were jealous of giving the power of determining thoſe offences into any ſudden hand. To ſum up then the firſt part as touching the puniſhment of offences againſt the peace, the wheel is now in the turning, the Leets and Torns begin to be ſlighted, the labour of the Juſtices *itinerant* leſſened, the Commiſſions of *Oyer* and *terminer* diſuſed, by the bringing in of a new order of Juſtices for the peace eſpecially appointed. And the Parliament as the ſupreme providers, left as the reſerve for the aſſerting and maintenance of the ſame, albeit that under it the power of determining much reſted upon Juſtices or Judges that attended the King's Court, after that the Common-pleas were ſettled and confined to a certain place.

Hen. 1. *cap.* 58.

The preſerving of the peace for the future conſiſted in preventing and ſuppreſſing riots, routs, unlawful aſſemblies, and in apprehending and ſecuring of ſuch as were actors and contrivers of ſuch deſigns, and other malefactors. And herein we are to conſider, 1. The Laws. 2. The means. 3. The executive power. Concerning the firſt there is no queſtion to be made, but that the power of making Laws for the maintenance of the peace reſted in the Parliament, although endeavour

poſ-

possibly might be used to settle the same in the sole order of the King's own person; and therefore we find not only the assize of Arms, but generally the substance of the Statute at *Winton*, to be formerly taken up by Proclamation by Kings, predecessors to *Edward* the second, who first that I can find, put the same into force of a Law by Parliament, finding by experience that Proclamations may declare the King's mind, but not command the peoples wills, although peradventure, the thing enjoyned was of ancient use, and little inferiour to custom, or Common-Law. Such are the distempers of civil broils, that bring up peace in the rear, as a reserve when their own strength is wasted, rather than out of any natural inclination thereto. A brief recollection of the Laws thus ensue,

Stat. Wint. 13 Edw. 1. cap. 1. *In case of Robbery or Felony committed, and the delinquent be not forth-coming or discovered, the County or Hundred shall answer the damages.*

Of this, more may appear from the Norman and Saxon Laws: the intent appeareth by the Law it self, to stir up the people to use all means by pursuit with hue and cry, and making inquisitions of the Fact with all speed, in Townships, Hundreds, Franchises, and Counties.

cap. 2. *Persons suspected shall not be entertained or harboured by any Inhabitant, unless He will undertake for him.*

Of this also formerly, both in the Norman and Saxon Laws.

cap. 3. *Walled Towns shall keep their gates shut from Sunset to Sun-rising. The like observed in Cities, Burroughs, and Towns, from the Feast of* Ascension *to* Michaelmas.

The power of the Watch was great: it might apprehend any passenger, and stay him all night; and if he be a suspected person, he is to be committed to the Sheriff; and if an escape be made, the party is to be pursued with hue and cry. These two last Chapters, were in effect in *Henry* the third's time, in course by

by way of the King's command by Writ, in the 36 and 37 years of his Reign, with some more particulars concerning the same. *M. Paris in Addit. & post. Adversar.*

High-ways through every Lordship shall be kept clear on each side, by the space of 200 *foot from hedges, ditches, bushes, and underwood.* cap. 4.

High-ways herein intended, are such as are from one Market-Town to another, and in such were always preserved the publick peace or safety, for the maintenance of commerce, and freedom of Traffick, which is of such publick concernment, that it hath been of very ancient institution.

Every man between the age of fifteen years and forty shall maintain Arms in his house, according to the ancient Assize for the preserving of the Peace. cap. 5.

This Chapter brings into consideration the second thing propounded, *viz.* the means of preserving of the peace, which are two: First, by maintaining Arms. 2. By certifying defaults. In the first is to be considered the persons that are to be assessed; 2. The Arms; 3. The end. The persons to be assessed to Arms are indefinitely set down, and comprehend all sorts, as well bond as free, and others; for such are the expressions in the Commission of *Henry* the third. But by the Assize of *Henry* the second, none were to be armed but Free-men, and they worth sixteen or ten marks in goods at the least: yet their Ages are limited; by this Law they must be between fifteen years and forty; but by the Commission in *Henry* the third's time, all between fifteen and sixty years of Age were to be armed. King *John* arrayed all sorts, free, bond, and all others that have Arms: or ought to have or can carry Arms; and it seems by what hath been formerly noted, that those that were younger, than their Tenure would bear them out, were accepted into service, if they would offer themselves; but by these courses they though under one and twenty years of age were not only accepted, but compelled to War. Under this Title, we may also touch upon the persons that were the instruments to array these men, or rather to arm them; and these

36 Hen. 3. M. Paris. post. adversaria. Hoveden.

M. Paris An. 1213.

Hoveden. Hen. 2. M. Paris ad. dit.

these were Justices *itinerant*, or one or more Commissioners, such as the King found most meet for the service; and unto these were Commissions with instructions sent; and sometimes Writs were directed only to the Sheriffs, to take with them twelve Knights of the County, and to go into every Hundred, and call before them all such persons, as by the Law ought to be assessed at Arms, and to cause them to be sworn to find and maintain Arms in such manner as by the Law they then should be, or formerly were assessed; and sometimes the establishment of Arms were set down in those Writs, and sometimes published by Proclamation. For Kings found all means little enough to prevail to bring in alteration of Arms, and of their service, which was a thing not only troublesome, but chargeable, and whereunto they could not easily prevail to bring the Free-men to consent; and therefore sometimes the endeavours of Kings in such cases, did not only meet *dilationem*, but also *deletionem*, as the Historian's words are, until the way was found out to declare an establishment by Parliament, by this Statute made at *Winton*.

Mt. Paris. ad. 1253.

Mt. Paris. An. 1253, & 1256.

Mt. Paris. An. 1253.

Now for the nature of the establishment we are to consider, that the people of *England* were distinguished according to their Tenures, into such as held by Knight-service, and such as held by Socage; and that none but those being Free-holders could be charged to find Arms according as by the Laws of the Norman Conquerour may appear. The establishment of Arms for the Knights, were established by their Tenures in certainty, and therefore no need was either of assessment, or oath to tie them to find such Arms; but all the difficulty was, for such as were not bound by other Tenure than as free born subjects, all of whom do owe to their Country defence, and so questionless had liberty to provide themselves of such Arms, as were by common and constant use held most advantageous against the common enemy, and for the publick defence. And that these were put in certainty, may appear by the Law of King *William* formerly noted, and by some instances in the Saxon Laws anciently used; amongst others, that Law of *Æthelstane*, that for every Plough, every Man should find two compleat Horses.

W. Cuilelm. 58.

L. Æthelst. c. 16.

And

And another order of *Ætheldred* nigh 80 years after, differing from it, assessed upon every eight hides of Land, a Helmet, and a Coat of Mail; and the Historian tells us, that a Hide is a plough Land, or so much Land as one Plough can keep in till the one whole year; and the relief of the Noble-men of all sorts and ranks, in Horses, Helmets, Coats of Mail, Lances, Shields and Swords, the meanest of all which degrees, being called *Mediocris Thainus*, yielding a relief equal to the Arms of a Knight, in the times whereof we now treat, *viz.* one Horse, one Helmet, one Coat of Mail, one Lance, one Shield, one Sword; all comprehended under *arma sua*, as if he had a certain proper Arms; and the Laws concerning the forfeiture of Arms do in effect affirm the thing, *viz.* that all men were armed; yet probable it is, that Laws were not then so often made for the inforcing this or that particular sort of Arms, in regard that till the Normans time this Island was troubled but seldom with any enemies from foraign parts, that brought any new sorts of weapons into fashion, the Danes and Norwegians being no other than an old acquaintance of theirs. Neither were the Saxons as yet tamed by any enemy, so far as to beg a peace, albeit that the Danes had gotten them under. But after the Norman times, the English being somewhat overmatched in War, inclined more to Husbandry, and began to lay aside their regard of Arms; and this occationed the Kings to make assessments of Arms; yet having regard to the ancient course of the Saxons, saving that they urged the use of the Bow more than formerly was used, and thereby taught the conquered, to conquer the Conquerours in future ages. Of these sorts of assessments before this Statute at *Winton*, I find but two; the first made by *Henry* the second, and the other by *Henry* the third, which together with that of this Statute, I parallel thus together in their own words.

Huntington. *An.* 1008. *Ll. Canut.* 97.

Hen. 2.	Hen. 3.		Stat. Wint.
	Lands.	Goods.	
Knights fee.	15 Librat.	60 marks.	15 l. Land, 40 marks Goods.
Loricam *Caſſidem* *Clipeum* *Lanceam*	*Loricam* *Capellum ferri* *Gladium* *Cultellum* *Equum*	*Loricam* *Capellum ferri* *Gladium* *Cultellum* *Equum*	*Hauberk* *Shapel de fer* *Eſpee* *Cotell* *Chival*
16 Marks { Chattels / Rents.	10 Librat.	40 marks.	10 l. Lands, 20 marks Goods.
Halbergellum *Capelletum ferri* *Lanceam*	*Halburgettum* *Capellum ferri* *Gladium* *Cultellum*	*Halbertum* *capellum ferreum* *Gladium* *Cultellum*	*Hauberk* *Shapell de fer* *Eſpee* *Cotell.*
10 Marks { Chattels / Rents.	100 s.	20 marks.	100 s. Land.
Wanbais *Capelletum ferri* *Lanceam*	*Perpunctium* *capellum ferreum* *Gladium* *Lanceam* *Cultellum*	*Perpunctium* *capellum ferreum* *Gladium* *Cultellum*	*Purpoint* *Shapell de fer* *Eſpee* *Cotell*
	Betwixt 5 l. & 40 s.	9 marks.	Betwixt 5 l. & 40 s.
	Gladium *Cultellum* *Arcum & ſagit.*	*Gladium* *Arcum & ſagit.* *Cultellum*	*Eſpee* *Arke & ſetes* *Cotels*
	under 40 s.	under 9 marks to 40 s.	under 40 s.
	Falces *Giſarmas,* *Cultellos, &c.*	*Falces* *Giſarmas, &c.*	*Faulx* *Giſarmes* *Cotels*
			under 20 marks Goods.
			Eſpees *Cotels.*

I have thus impaled these three, that the Reader may the better discern how they relate each to other, and so may the better understand the matter in the sum. And I must explain three or four words in them as they are set down, before I can bring up the conclusion, because the mistake of the sence of the words, hath made some mistake the intent of the thing, and forced the same to an unwarrantable issue. *Lorica* signifies that peice of Armour that defends the breast, or fore-part of the body, and sometimes is made of plates of Iron, of which sort I conceive, those of the old Germans were (whereof the Historian maketh mention, *pauces loricæ*, he saith the Germans had few Arms of defence of their fore-parts, and fewer Helmets or Head-peices) for otherwise, if they had Iron defences for their heads, they would not have been content with defences made of Leather for their fore-parts, as in the first rude times they might have been: Sometimes it's made of links of Iron, and commonly is called a Coat of Mail; but I conceive it cannot be so meant in the assessments of *Henry* the second, and *Henry* the third, because that those of the second degree are said that they ought to keep *Haubergettum*, or *Halburgellum*, or *Haubertum*; all which are but several dialects of one name, and are taken for a Coat of Mail: and therefore by the diversity of names in one and the same assessment, I do conclude that the Armour was not of one and the same fashion. But it's evident, that by *Hauberk* in the assessment of the Statute at *Wint.* is meant a Coat of Mail, and is never taken for a Brest plate or Gorget, as hath been taken upon trust by some that build more weighty conclusions upon that weak principle, than it's able to bear; and for the truth hereof, as the word is a French word, so I appeal to all French Authors, and shall not trouble the Reader with the notation of the word, or further about the meaning thereof. In the last place, as great mistake is, that also of the word *Shapell de ferr*, which is taken by some to betoken a brest-plate of Iron. For the truth whereof, the Reader may consider the Latin word *Capellum*, or *Capelletum*, and he shall find that it is an Iron-cap, or an ordinary Head-peice: and in the Assize of *Henry* the third, it holds

Lipsius de milit. Rom. lib. 3. Dialog. 6.

Tacitus.

Cluer. Germ. p. 339. 34.

holds the place of *Caſſis* in the Aſſize of *Henry* the ſecond; for the manner of all theſe, let the Reader view the ſculptures of the ſeveral Norman Kings, armed for the charge, in the beginning of their ſeveral Reigns, as they are repreſented in *Speed's* Hiſtory. It may alſo be conceived, that there is as much miſtake of that weapon, which is called *cultellum* or cotel, whilſt they tranſlate it by the word Knife, for though it be true, that it is one ſignification of that word, yet it appears not only by this Law, that it was a weapon for a Knight in War; but in uſe at Tornaments, as by that Statute that forbids the uſe of a pointed Sword, or pointed Cotel, a Battoon, or a Mace, at that ſport: and therefore it may ſeem to be ſome weapon of greater uſe, either a Cotellax, or ſuch like weapon; otherwiſe to enjoyn the finding of a Knife to a man as an offenſive weapon, againſt armed men in Battel would ſerve to no uſe at all.

Now concerning the difference between the ſeveral Aſſizes aforeſaid, it conſiſteth either in the number of the ſeveral degrees or ranks of thoſe that are aſſeſſed: or ſecondly, in the manner of their valuation: or laſtly, in the particulars of their Arms aſſeſſed upon them. As touching the degrees in *Henry* the ſecond's time, they were but three, in regard that he only aſſeſſed Free-holders: and certainly that was the ancient Law, as by the Law of the Conquerour, and other Saxon Laws formerly mentioned may appear. But *Henry* the third taking example of King *John*, who was the firſt founder of general arrays, charged all but ſuch as were men of nothing; albeit, I find not that ſuch as were of the inferiour degree, were ſworn to thoſe Arms, but rather allowed to have them. And though the Statute at *Wincheſter* holdeth to the ſame degrees in Lands, yet in the value of goods, there is ſome difference in favour of them that only have ſtock, and no Free-hold. Secondly, there is ſome difference in the manner of valuation of Lands with Chattels; and therein the Statute at *Winton* favours the perſonal eſtates, more than *Hen.* 3. and he more than *Hen.* 2. and yet all of them pretend one rule of ancient cuſtom; I believe they mean that they had it in their eye, but not in their hears: for they would come as nigh to it as they could, and yet keep

as

as far from it as they durſt. Thirdly, as touching the difference of the Arms between theſe three aſſeſſments, it ſeems ſo ſmall, as in this, they are moſt of all one. For wherein *Hen.* 2. leads, both *Hen.* 3. and *Edw.* 1. do imitate, ſaving that they add the Horſe and Sword, which queſtionleſs was to be underſtood as a granted caſe, that the compleat Arms of a man could not be carried and managed without a Horſe, nor defended without a Sword. As touching other alterations, it might be done upon good advice, as not being deemed meet that ſuch as were no Knights but in eſtate, ſhould be armed in every reſpect like as the Knights were. And thus we have an ancient cuſtom of maintaining Arms by every Free-man, for the defence of the Kingdom, firſt made uncertain by the avarice of Kings, and negligence of the Free-men, and brought into an arbitrary charge; at length reduced to a certainty, upon all ſorts of Inhabitants by a Statute Law (if ſo it then were) unto which every man had yielded himſelf bound by his own conſent. But to what end is all this? I ſaid it was for the defence of the Kingdom, and ſo it was in the original; and yet alſo for the ſafety of the King in order thereunto, and for the ſafety and maintenance of the peace of every member of the whole body. This in one lump thus will not down with ſome, who will have this aſſeſſment only to be for keeping of the peace againſt routs and riots, but not ſufficient nor intended to be ſupply for War, when *Edward* the firſt calls for it, becauſe *Edward* the firſt ſhall not have his power confined within the compaſs of a Statute, but to be at liberty of array as he ſhould think meet; and it's not to be denyed but the words of this Law run thus, *viz.* That the intent thereof is for preſerving of the peace; but thoſe general words will not bear the power of a reſtrictive ſence, for certainly the peace is as well preſerved by providing againſt War as againſt Riots; and againſt Foraign War as inteſtine mutinies: and that the Statute intended the one, as well as the other will appear, becauſe it was made in relation to former precedents of *Henry* the third, and they ſpeak plainly that their intent was to ſtrengthen the Kingdom againſt dangers from abroad; the words

of

of the Hiſtorian are clear, that *Henry* the third charged all that had 15 *libratas terræ*, and upwards, ſhould undertake the Arms of a Knight, *ut Anglia ſicut Italia militia roboraretur.* And becauſe he had threats from beyond Sea, by the defection of the Gaſcoigns, therefore he cauſed Writs to iſſue forth throughout the Kingdom, that *ſecundam priſtinam conſuetudinem*, aſſeſſment of Arms ſhould be *ſecundum facultates*; and in one of the Writs publiſhed, by the Hiſtorian the expreſs aſſeſſment of *H.* 3. formerly mentioned, is particularly ſet down. Nor are theſe Arms thus aſſeſſed, ſo ſlight as men would pretend, for the Arms of the firſt rank, were the compleat Arms of a Knight, and their eſtates equal thereunto; for thoſe 15 *libratæ terræ* amounted unto 780 Acres of Land, as the late publiſher of *Paris* his Hiſtory hath it; and is very nigh the reckoning of *Henry Huntington*, who (as hath been mentioned) layeth a Helmet and Coat of Mail unto eight Hides of Land, which according to *Gervaſe* of *Tilburie's* account, cometh to 800 Acres, every Hide containing one hundred Acres. Theſe therefore were better than Hoblers. And the ſucceeding ranks found Arms alſo proportionable to their eſtates, as conſiderable as the times could find for ſuch as were of conſtant uſe, and might be ſupplyed with other weapons, as occaſion ſerved, and as they might be of moſt benefit for the ſervice.

M. Paris f. 916

M. Paris fo. 864.

Vid. poſt. Adverſaria. M. Paris.

Cap. penult.

Furthermore, whereas it's ſaid, that the wiſdom of the Parliament might be queſtioned, if they intended no better proviſion againſt an enemy, than againſt a Thief or Rogue, I ſhould deſire the conſideration of thoſe men, whether are thoſe thieves and rogues, in Troops or bodies, and well armed, or are they a ſort of ſcattered out-laws, lightly armed to fly away, when they have gotten the prey? If they were in the former poſture, I pray what difference in point of difficulty of ſuppreſſing between them and ſo many enemies? and if it was diſcretion in the Parliament to make this proviſion againſt the one, certainly theſe, with the Knight-hood of the Kingdom, with as much diſcretion, will be ſufficient proviſion againſt the other. But if theſe be looked upon in the latter ſence, I fear the diſcretion of the Parliament would have been much more queſtioned

ſtioned in arming all men that have any ability to ſuppreſs Thieves and Rogues, againſt which the ordinary watch and ward of the Kingdom, was an ancient and approved remedy, and ſufficient ſafe-guard. And I would fain know of theſe men whether it be for the ſafety of *Edward* the firſt or any other King to arm the whole body of the people, eſpecially in times of jealouſie for ſuppreſſing of Thieves and Robbers, when as it may be done by a guard of known men in every County, with much more eaſe and leſs charge to the people.

Laſtly, whereas it's endeavoured to make this Statute but a temporary proviſion and taken up for the preſent condition of affairs, when Thieves and Robbers went with great ſtrength, and in multitudes. This might be I grant of ſome efficacy, if it had been *introductio novi juris*; but it being grounded upon a former cuſtom, the ground of that cuſtom (which was defence of the Kingdom) muſt be the warrant of the Law; otherwiſe the preſent inconvenience might be remedied by a preſent order, and needed not the help of a Law that ſhould reſt upon former cuſtom, or provide for future generations. Nevertheleſs, if all be granted, *viz.* that this Statute is but a preſent order, that the Arms therein are too ſlight to reſiſt an enemy; and the end thereof was only to enable the Kingdom againſt Thieves and Robbers; yet could not *Edward* the firſt pretend to have any power to aſſeſs Arms at pleaſure upon occaſion of War, for the defence of the Kingdom; nor is there any precedent in ſtory that countenanceth it, ſeeing *Henry* the third, and *Henry* the ſecond, in their courſe uſed the rule *ſecundum facultates*, as had been formerly obſerved; and the rule foregoing tended only to Free-men and their Lands. Nor did King *John* diſclaim the ſame, but purſued it (and yet if there be any precedent of prerogative in ſtory, which King *John* had not, that King will be looked upon as a King of wonderment.) I ſay King *John* purſued it when he was in the ſtrength of his diſtemper; threatned by the Pope, provoked by the French King, now ready in the field, vexed by his people, and himſelf ſcarce himſelf, ſummons to defend himſelf, themſelves, and the Kingdom of *England*, all men that ought to have Arms, *M. Paris. An.* 1213.

or may have Arms, and such as have no Arms, and yet *arma habere possint*, let them also come *ad capiendum solidatas nostras*, and accordingly there came a vast number, not only of the Armed men, but of the unarmed multitude, who afterward were sent to their own home when victuals failed. Hitherto therefore King *John* not above three years before his death, held himself to the assessment to arms only of such as had Lands; and at this time of exigency, others unarmed were summoned to take arms from the King with their pay, or otherwise they must fight without weapons.

I am now come to the last general point, which concerneth the executive power of matters concerning the peace within this Law, touching which the Statute enforceth this, that Constables in every Hundred and Franchise shall have the view of arms, and shall present defaults against the Statute of Justices assigned, who shall certifie the same to the King in every Parliament, and the King shall provide remedy; whereby it seemeth manifest, that hitherto no Law or custom was made against any for default of arms, but only such as held by that Tenure: and therefore they had a shift to cause them to swear to maintain arms, and so might proceed upon defaults, as in case of perjury; and that the Parliament was still loth to set any certain rule for penalty, and absolutely declined it, and left it under a general *periculo incumbente*, which it's likely, men would rather eschew by obedience, than adventure upon out of a daring spirit, unless their case was very clear, within the mercy of common reason; and therefore such cases were left to special order of the Parliament, rather than they would deliver such a rod as determining power was, over into any uncertain hand whatever. It is very true, that by the opinion of some, this also hath been controverted, as if all the executive power had been turned out of the Parliaments order, into the directory of *Edward* the first, which thing reacheth far; for then in order thereunto, the whole Militia of the Kingdom must have been under his safe command; and whether it ever entred into the conceit of that King I know not, but somewhat like thereunto, is not obscurely urged to nourish and suggest such a kind of notion, and

and so derive it unto his successors, upon the words of a Statute *de defensione portandi armorum*, the English whereof I shall render out of the French as followeth:

It belongeth to us (viz. Edw. 1.) *and from us by our Royal Seignory to defend force of Arms, and all other force against our peace at all times that we shall please, and to punish according to the Laws and usages of this Realm, such as shall oppose, and to this, they* (viz. Lords and Commons) *are bound us to aid as their good Lord, always when need shall be.*

Two things are concurrant with this, which is the body of the Statute (if such it be;) the one is the preface, or the occasion: and the second is, the conclusion upon the whole body of the same. The preface first sets down the inscription or direction of the Law; not to the people but to the Justices of his bench, and so it's in nature of a Writ or Declaration sent unto his Judges. Then it sets down the occasion, which was a debate between *Edw.* 1. and his Lords, with a Treaty which was had before certain persons deputed thereto: and it was accorded, that at the next Parliament, Order shall be taken by common consent of the King, the Prelates, Earls and Barons, that in all Parliaments, treaties, and other assemblies which shall be had in the Kingdom of *England* for ever after, all men shall come thereto without force, and without Arms, well and peaceably; and thence it recites, that the said meeting at Parliament was had, and that there the Prelates, Earls, Barons, and Comonalty being assembled to advise upon this matter: *nous eiont dit*, saith one copy, and *nous eions dit*, saith another copy; so as whether this was the Declaration of the King unto the Parliament, or of the Parliament to the King, is one doubt, and a principal one it is in such a case as this. Then the conclusion of all is, that the King commandeth these things shall be read before the Justices in the bench, and there enrolled; and this is dated the 30*th.* of *October* in the seventh year of his Reign, which was *Ann.* 1279. So as if it were the Declaration of the King, then it implieth as if it were not very well accepted of the Parliament; and therefore the King would have it

reſt upon record in nature of a claim or *proteſtando*, for ſaving the prerogative of the Crown. But if it were the Declaration of the Parliament, the King held it ſo precious a flower; that fearing it ſhould fade, ſet it in a private Garden of his own; that it might be more carefully nurſed againſt the blaſt of time, as if the Parliament had not aſſented thereto, or (if they did) meaned not to hold it forth to the world for future times to be a conſtant rule, but only by way of conceſſion, to eaſe themſelves of the preſent difficulty, in making a Law againſt wearing of Armour in ordinary civil affairs, and ſo referred it to the King's care to provide againſt emergent breach of the peace, as an expedient for the preſent inconveniences in affairs. And it will well ſuit with the poſture of affairs then in courſe, for the Welſh Wars were now intermitted, and a quiet of three years enſued; in the midſt of which, Soldiers having liberty to do nothing (and that is next to naught) but recreate themſelves, uſed their wonted guiſe, as if they were not dreſſed that day that they were not armed; nor fit for counſel, unleſs (as their Anceſtors) with weapons in their hands, nor worthy of the preſence of a King under other notion, than as a General in the field, and themſelves as Commanders that are never *A-la-mode*, but when all in Iron and Steel. I ſay to make a Law that muſt ſuddenly bind men from riding, or being armed, when no man thought himſelf ſafe otherwiſe, was in effect to expoſe their bare necks to the next turn of the Sword of a King, that they did not over much truſt, and the leſs in regard he truſted not them. I do not wonder therefore if the Parliament liked not the work, but left it to the King to provide for the keeping off breaches of the peace, and promiſed their aſſiſtance therein.

Laſtly, ſuppoſing all that is or can be ſuppoſed, *viz.* that the Parliament had given up the power of the Militia unto *Edw.* the firſt, yet it was not to all intents, nor did it continue; for beſides the Statute of Tornaments, which ſheweth plainly that the ordering of Armour, was in the power of the Parliament; and which in all probabilty was made after that Law laſt before-mentioned; the Statute at *Winton* made after this Law

nigh

nigh ſix years ſpace, ordereth the uſe of the Trained bands in maintaining the peace, and reſerveth the penalties to themſelves for any default committed againſt the ſaid act. And therefore notwithſtanding any thing, that yet appeareth to me out of any Law or Hiſtory, the chief moderatorſhip of War and peace, within the Realm of *England*, reſteth hitherto upon the Parliament next unto God, and in the King no otherwiſe, than in order to the publick, the rule whereof can be determined by no other Judge, than that which can be intended to have no other reſpect than the publick good; and which is the abridgement of the large volume of the Kingdom.

A ſummary Concluſion.

AND thus have I brought the ſhape of Engliſh Government (rude as it is) from the firſt off-ſpring of the Saxons, through the rough waves of the Daniſh tempeſts, the rocks of Norman invaſion, and of the Quick-ſands of Arbitrary government under Popes and Kings to the Haven; much defaced it is I confeſs, by the rage of time, and yet retained the original likeneſs in proportion.

Kings firſt (about the Norman times) joyning with the Lords for their joynt intereſt above the ordinary pitch, had mounted each other too high to be Lords over Free-men; Then by flattering of the Free-men into their deſigns, hovered above them all; but not being able to maintain their pitch ſo long as the Lords held together, ſtooped for a party amongſt them, and ſoon obtained their deſire. For ſome Lords (more ambitious than others; and they again more popular than them) ſeek ſeveral intereſts: And thus Kings (aided by their party to a Supremacy which they were never born to; and it by them into a preheminence above their Peers, which neither Law nor Cuſtom ever gave them) are of Moderators in the Council of Lords, become Moderators of thoſe Councils; and

and so they obtained all that the Lords had, but no more. For though both they, and the Lords abused their power over the Free-men by extorsion and oppression as Lords over Tenants; yet could they never prevail over them as free born subjects to gain their consent to give their right, or the Law up to the King's beck; but still that remained arbiter both of King and people, and the Parliament Supreme expounder and Judge both of it and them. Other argument hereof there will be little need, besides what hath formerly appeared, than what we find in *Bracton*, who wrote in the time of *Henry* the third, to this effect: *God is superiour to the King, and the Law by which he is made King, and his Court*, viz. *the Earls and Barons: Earls (according to their name* Comites*) are the King's associates, and he that hath an associate hath a master; and therefore if the King be unbridled (or which is all one) without Law, they ought to bridle him, unless they will be unbridled as the King, and then the Commons may cry, Lo Jesus*, &c. This was the judgement of that famous Lawyer of the State of an English King, in *Henry* the third's time, I shall add hereto a concurrent testimony of a Lawyer also in *Edward* the first's time. *Although* (saith he) *the King ought to have no equal in the Land: yet because the King nor his Commissioners (in case where the King intrencheth upon the right of any of his Subjects) can be both Judge and Party; the King by right ought to have companions, to hear and determine in Parliament, all Writs and plaints of wrongs done by the King, the Queen, or their Children, and of those wrongs especially, whereof otherwise common right cannot be had.* Nor is this the opinion only of Lawyers, but it is the Law it self unto which the Royal assent was added, and the same sealed with an Oath in the solemn stipulation made by Kings at their Coronation, with the people then present in the name of the whole body: the sum whereof is wont to be propounded to the King in this manner, though in a different Language.

Bracton, lib. 2. cap. 16.

Mirror. Just. p. 9.

Edw. 2.

Remonst. Parliament. novem. 1. 2. An. 1642.

1. *Will you grant and keep, and by your Oath confirm to the people of* England, *the Laws and Customs to them granted by the ancient Kings of* England, *your righteous and*

and godly predeceſſors: and eſpecially to the Clergy and people, by the glorious King St. Edward *your predeceſſor?*

The King's anſwer: I do them grant and promiſe.

2. *Will you keep to God and the Church, and the Clergy, and the People, peace and concord ſincerely according to your power?*

The King's anſwer: I will do it.

3. *Do you grant to hold and keep the Laws and rightful Cuſtoms, which the Commonalty of your Realm ſhall have choſen, and to maintain and enforce them to the honour of God after your power?*

The King's Anſwer: I this do grant and promiſe.

In few words, the King promiſed to keep the Laws already made, the peace of his Kingdom, and the Laws to be agreed upon by the Commonalty: the ſame in ſubſtance with that of *Henry* the firſt, *William* the Conquerour; the Daniſh and Saxon Kings formerly had, and in the foregoing diſcourſe obſerved: And thus is he led to the Throne in a Chain of Gold, a ſerious memorial of the King's duty as he is a Man, and a glorious ornament to him as a King. If then the King be under the Law in caſe of direction, as by ſtipulation he is bound, if he be likewiſe under the Law in caſe of tranſgreſſion to be judged by his *Comites*, or Peers. Hitherto certainly an Engliſh King is but *Primus inter omnes*, and not *ſupra totum*; and if at any time he skipped higher, he afterwards fell lower; for it was the lot of theſe times to have Lords that were bent to work the people to regard their own liberties; in which the Lords had firſt wrapped up their own claims. Thus comes the counſels of ſuch as have been notoriouſly exorbitant to be ſcanned; and to bring theſe into frame, all run out of frame; the Barons Wars ariſe, and thrive according as intereſts do con-

concenter more or leſs; the iſſue is like that of a drawn battel, wherein he that continueth laſt in the Field, is glad to be gone away, and ſo the Title is lett to be tryed upon the next advantage that ſhall ariſe.

Yet had Kings gotten one ſtep forwards to their deſign, which was, that they now had to deal with a divided Baronage. It was the birth of ambition, and it was nouriſhed by the ſame milk; for thoſe that ſide with the King are become Magnificoes next to the King's perſon, and the ſole managers of all the great affairs of State, concurrent with their own deſigns under-board. But the other Lords are in account rural, ſtanding further off, and looking on at a diſtance, are laid away as ſuperfluous: and as they themſelves are out of the game of great men, ſo grow they mindleſs of their intereſt in the great affairs, yet of theſe there is diverſity, for ſome ſport themſelves in their condition; others obſerve the irregular motions of thoſe above, and watch their own time.

This was the firſt advance of that ſociety, which was afterwards called the Privy-Council; being a company of choice men according to the King's bent, unto whom the conſideration of all the weighty affairs of the Kingdom is committed; but nothing can be concluded without the King's *fiat*, which regularly ſhould follow upon the premiſſes, according to the major vote; but more ordinarily ſuiteth with that, which beſt ſuiteth with his pleaſure. And now are Parliaments looked on as fatal, or at the beſt, but as heavy dull debates, and inconvenient both for ſpeed and ſecrecy; which indeed are advantages for weak and unwarrantable counſels, but ſuch as are well grounded upon truth, and ſtrength of reaſon of State care not to behold the cleareſt noon-day, and prevail neither by ſpeed nor ſecrecy, but by the power of uncontrolled Reaſon, fetcht from truth it ſelf. The grand Council of Lords alſo are now no leſs burthenſome: For though they were not able to prevail againſt the private deſigns of an arbitrary Supremacy, yet do they hinder the progreſs, tell tales to the people, and blot the names of thoſe that are of that aſpiring humour; which once done, like that of *Siſyphus* they have no other end of their labour than their toil.

Thus

Thus perished that ancient and rightly honourable Grand Council of Lords, having first laid aside the publick, then lost unity, and lastly themselves; besides the extreme danger of the whole body. For the sence of State once contracted into a Privy-Council, is soon contracted into a Cabinet-Council, and last of all into a Favourite or two, which many times brings damage to the publick, and both themselves and Kings into extreme *præcipices*; partly for want of maturity, but principally through the providence of God over-ruling irregular courses, to the hurt of such as walk in them.

Nor were the Clergy idle in this bustle of affairs, although not very well employed; for it is not to be imagined but that these private prizes plaid between the Lords, Commons and King, laid each other open to the aim of a foraign pretension, whilst they lay at their close guard one against another: and this made an Ecclesiastical power to grow upon the Civil, like the Ivy upon the Oak, from being servants to friends, and thence Lords of Lords, and Kings of Kings: By the first putting forth, it might seem to be a Spiritual Kingdom, but in the blossom, which now is come to some lustre, it's evident to be nothing but a Temporal Monarchy over the consciences of men; and so like Cuckows, laying their Eggs in nests that are none of their own, they have their brood brought up at the publick charge. Nevertheless, this their Monarchy was as yet beyond their reach; it was Prelacy that they laboured for, pretending to the Pope's use; but in order to themselves. The cripple espyed their halting, and made them soon tread after his pace; he is content they should be Prelates, without measure, within their several Dioceses and Provinces, so as he may be the sole *Prælatissimo* beyond all comparison; and undoubtedly thus had been before these times destroyed the very principles of the Church-government of this Kingdom, but that two things prejudiced the work: the one, that the Papalty was a Foraign power, and the other, that as yet the Pope was entangled with the power of Councils, if he did not stoop thereunto. The first of these two, was the most deadly Herb in the Pottage, and made it so unsavoury, that it could never

be digested in this Kingdom: For Kings looking upon this as an intrenchment upon their prerogative, and the people also as an intrenchment upon their liberties, both or one of them were ever upon the guard, to keep out that which was without, and would be ruled neither by Law nor Counsel. And therefore though both Kings and people, yielded much unto the importunity of these men, and gave them many privileges whereby they became great; yet was their greatness dependent upon the Law of the Land and vote of Parliament; and though they had the more power, they nevertheless were not one jot the more absolute, but still the Law kept above their top; I deny not, but they in their practice exceeded the rule often, and lifted themselves above their rank; yet it is as well to be granted, that they could never make Law to bind the Church men much less the Laity, but by conjunction of the grand Councils, both for Church and Common-wealth-affairs; nor could they execute any Law in case that concerned the liberty or propriety of either, but in a Synodical way, or as deputed by the Parliament in that manner. And therefore I must conclude, that in these times whereof we treat, the principles of Church government, so far as warranted by Law, were in their nature Presbyterial; that is, both in making Laws and executing them; Bishops and Arch-Bishops were never trusted with the sole administration of them, but in and by consent of Synods, in which the Clergy and Laity ought to have their joynt vote, and all power more or contrary hereto, was at the best an usurpation coloured by practice, which was easily attained, where there was a perpetual moderatorship resting in the Bishop, and over all the Pope; the King, Lords and Commons in the mean while being buried in pursuit of several interests elsewhere.

To make all semblable, the Free men met with the sad influence of these distempers, as well from the King and Lords, as the Clergy. Kings to save their own stake from the Pope, remitted of that protection which they owed to their Subjects, and let in upon them a flood of oppressions and extortions from the Romish and English Clergy, and so like a little ship cast out a barrel for the Whale to peruse, till it gets away: but this

changed

changed no right. The Lords by their parties ſhattered them aſunder, and diſmembred their body by inteſtine broils. The Clergy more craftily making ſome of them free Deniſons of the Roman See, and taking them into their protection, whilſt others of the Free-men at a diſtance, were expoſed as a prey to the continual aſſaults of thoſe devouring times: all theſe conſpired together, to deface and deſtroy that ancient and goodly bond of Brotherhood, the Law of Decenners, by which the Free-men, formerly holden together like Cement in a ſtrong wall, are now left like a heap of looſe ſtones, or ſo many ſingle men ſcarcely eſcaping with their skin of liberties, and thoſe invaded by many projects and ſhifts in government of State-affairs. So muſt I leave them until ſome happy hand ſhall work their repair, both for time and manner, as it ſhall pleaſe *that great and wiſe Maſter-builder of the World.*

FINIS.

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FINIS.

THE CONTINUATION OF AN HISTORICALL DISCOURSE, OF THE GOVERNMENT OF ENGLAND,

Until the end of the Reign of Queen ELIZABETH.

WITH

A Preface, being a Vindication of the ancient way of Parliaments in *ENGLAND.*

By *Nath. Bacon* of *Grays-Inn, Esquire.*

LONDON,
Printed for *Matthew Walbanck*, and *Henry Twyford*, and are to be sold at Grays-Inn-Gate, and in Vine-Court Middle Temple, 1651.

The Contents of the ſeveral Chapters of this Book.

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A PRE-

A PREFACE,

CONTAINING

A Vindication of the Ancient way of the Parliament

OF

ENGLAND.

THE *more Words, the more Faults*, is a divine Maxime, that hath put a ſtop to the publiſhing of this Second Part for ſome time; but obſerving the ordinary humour ſtill drawing off, and paſſing a harſher cenſure upon my intentions in my Firſt Part, than I expected: I do proceed to fulfill my courſe, that if cenſure will be, it may be upon better grounds, when the whole matter is before: Herein I ſhall once more mind, that I meddle not with the Theological right of Kings, or other Powers, but with the Civil Right in Fact, now in hand. And becauſe ſome Mens Pens of late have ranged into a denyal of the Commons ancient right in the Legiſlative power; and others, even to adnul the right, both of Lords and Commons therein, reſolving all ſuch power into that one principle of a King, *Quicquid libet, licet*; ſo making the breach much

much wider than at the beginning; I ſhall intend my courſe againſt both: As touching the Commons right, joyntly with the Lords, it will be the main end of the whole; but as touching the Commons right, in competition with the Lords, I will firſt endeavour to remove out of the way what I find publiſhed in a late Tractate concerning that matter, and ſo proceed upon the whole.

The ſubject of that Diſcourſe conſiſteth of three parts, one to prove that the ancient Parliaments, before the thirteenth Century, conſiſted only of thoſe whom we now call, the Houſe of Lords; the other, that both the Legiſlative and Judicial Power of the Parliament reſted wholly in them: Laſtly, that Knights, Citizens, and Burgeſſes of Parliament, or the Houſe of Commons, were not known nor heard of, till punier times than theſe. This laſt will be granted, *Viz.* That their ſeveral Titles, of Knights, Citizens, and Burgeſſes, were not known in Parliament till of latter times: Nevertheleſs, it will be inſiſted upon, that the Commons were then there: The ſecond will be granted, but in part, *Viz.* That the Lords had much power in Parliament in point of Juriſdiction, but neither the ſole, nor whole.

The firſt is abſolutely denied, neither is the ſame proved by any one inſtance or pregnant ground in all that Book, and therefore not clearly demonſtrated by Hiſtories and Records beyond contradiction, as the Title Page of that Book doth hold forth to the World. Firſt, becauſe not one inſtance in all that Book is excluſive to the Commons; and ſo the whole

Argument

Argument of the Diſcourſe will conclude, *Ab authoritate Negativa*, which is no argument in humane teſtimony at all.

Secondly, The greateſt number of inſtances in that Book, are by him ſuppoſed to concern Parliaments, or general Councils of this Nation, holden by the Repreſentative thereof; whereas indeed they were either but Synodical Conventions for Church-matters, whereunto the poor Commons (he well knoweth) might not come, unleſs in danger of the Canons dint; or if they did, yet had no other work there, than to hear, learn, and receive Laws, from the *Eccleſiaſticks*. And the Lords themſelves, though preſent, yet under no other notion were they, than as Counſel to the King, whom they could not caſt out of their Council till after Ages, though they often endeavoured it.

Thirdly, The Authour of that Tractate alſo well knoweth, that Kings uſually made Grants and Infeodations by advice of the Lords, without the aid of the Parliament: And it is no leſs true, that Kings, with the Lords, did in their ſeveral ages exerciſe ordinarily Juriſdiction, in caſes of diſtributive Juſtice; eſpecially after the Norman entrance: For the ſtep was eaſie from being Commanders in War, to be Lords in Peace; but hard to lay down that power at the Foot of Juſtice, which they had uſurped in the rude times of the Sword, when Men labour for life rather than liberty; and no leſs difficult to make a difference between their deportment in commanding of Soldiers, and governing of Country-men; till peace

peace by continuance had reduced them to a little more ſobriety: Nor doth it ſeem irrational, that private differences between party and party, ſhould be determined in a more private way, than to trouble the whole Repreſentative of the Kingdom, with matters of ſo mean concernment. If then, thoſe Councils mentioned by the Authour, which concern the King's Grants, and Infeodations, and matters of Judicature, be taken from the reſt of the Precedents, brought by him, to maintain the thing aimed at; I ſuppoſe ſcarce one ſtone will be left for a foundation to ſuch a glorying Structure, as is pretended in the Title Page of that Book: And yet I deny not, but where ſuch occaſions have befaln the Parliament ſitting, it hath cloſed with them, as things taken up by the way.

Fourthly, It may be that the Authour hath alſo obſerved, that all the Records of Antiquity paſſed through (if not from) the hands of the Clergy only, and they might think it ſufficient for them to honour their Writings, with the great Titles of Men of Dignity in the Church and Common-Wealth, omitting the Commons, as not worthy of mention, and yet they might be there then preſent, as it will appear they were in ſome of the particular inſtances enſuing, to which we come now in a more punctual conſideration.

The firſt of theſe by his own words, appear to be a Church-mote, or Synod; it was in the year 673. called by the Arch-Biſhop, who had no more power to ſummon a Parliament, than the Authour himſelf hath: And the ſeveral concluſions

ſions made therein, do all ſhew that the people had no work there, as may appear in the ſeveral relations thereof, made by *Matthew Weſtminſter*, and Sir *Henry Spelman*, an Author that he makes much uſe of, and therefore I ſhall be bold to make the beſt uſe of him that I can likewiſe, in vindicating the truth of the point in hand: For, whatever this Council was, it's the leſs material, ſeeing the ſame Author recites a precedent of *Æthelbert*, within ſix years after *Auſtins* entry into this Iſland, which was long before this Council, which bringeth on the Van of all the reſt of the Opponents inſtances, which King called a Council, ſtiled, *Commune Concilium tam Cleri quam Populi*: Pag. 126. and in the concluſion of the ſame, a Law is made upon the like occaſion, *Si Rex populum Convocaverit*, &c. in both which it's evident, that in thoſe times there were Councils holden by the people, as well as the *Magnates* or *Optimates*.

His next inſtance is in the year 694. which is of a Council holden by the Great Men, but no mention of the Commons, and this he will have to be a Parliament, albeit, that he might have found both Abbateſſes, or Women, and Presbyters, to be Members of that Aſſembly, and (for default of better) atteſted the Concluſions of the ſame, notwithſtanding the Canon, *Nemo militans Deo*, &c. But I muſt alſo mind him, that the ſame Author reciteth a Council holden by King *Ina*, *Suaſu omnium Aldermannorum*, *& Seniorum*, *& Sapientum Regni*: and is very probable, that all the Wiſe men of the Kingdom, were not included within the Lordly Dignity.

The third inſtance can have no better ſucceſs, unleſs he will have the Pope to be allowed power to call a Parliament, or allow the Arch-Biſhop power to do that ſervice by the Pope's command, for by that Authority; this (whatever it be) was called, if we give credit to the Relations of Sir *Henry Spelman*, who alſo reciteth another Council within three leaves foregoing this, called by *Withered* at *Barkhamſtead*, unto which the Clergy were ſummoned, *Qui cum viris utique militaribus communi omnium aſſenſu has leges decrevere*: So as it ſeemeth in thoſe times, Soldiers or Knights were in the Common Councils, as well as other great Men.

Concil Brit. Pag. 212.

*Ibid p.*194.

In the next place, he bringeth in a Council holden in the year 747. which (if the Archbiſhop were then therein Preſident, as it's ſaid, in the preſence of the King) was no Parliament, but a Church-mote, and all the concluſions in the ſame do teſtifie no leſs; they being every one concerning Eccleſiaſtical matters.

*Ibid. p.*242. 245.

And furthermore, before this time, the Author out of whom he citeth this Council, mentioneth another Council holden by *Ina* the Saxon King, in the preſence of the Biſhops, Princes, Lords, Earls, and all the wiſe old Men, and People of the Kingdom, all of them concluding of the intermarriage between the *Brittons*, *Picts* and *Saxons*, which formerly, as it ſeemeth, was not allowed: And the ſame King by his Charter, mentioned by the ſame Penman, noteth that his endowment of the Monaſtery of *Glaſtenbury* was made, not only in the preſence of the Great Men, but, *Cum præſentia populationis*; and he ſaith, that *Omnes confirmaverunt*, which

Pag. 219.

which I do not mention as a work neceſſary to be done by the Parliament, yet ſuch an one as was holden expedient as the caſe then ſtood.

Forty years after, he meeteth with another Council, which he ſuppoſeth to be a Parliament alſo, but was none, unleſs he will allow the Pope's Legate power to ſummon a Parliament: It was holden in the year 787. and had he duely conſidered the return made by the Pope's Legate, of the Acts of that Council, which is alſo publiſhed by the ſame Author, he might have found, that the Legate ſaith, that they were propounded in publick Council, before the King, Arch-Biſhop, and all the Biſhops and Abbots of the Kingdom, Senators, Dukes or Captains, and people of the Land, and they all conſented to keep the ſame. *Pag.* 302

Then he brings in a Council holden in the year 792. which he would never have ſet down in the liſt of Parliaments, if he had conſidered how improper it is to conſtrue, *Provinciale tenuit Concilium*, for a Parliament, and therefore I ſhall need no further to trouble the Reader therewith.

The two next are ſuppoſed to be but one and the ſame; and it's ſaid to be holden, *Anno* 974. before nine Kings, fifteen Biſhops, twenty Dukes, *&c.* which for ought appears, may comprehend all *England* and *Scotland*; and is no Parliament of one Nation, but a party of ſome Nations, for ſome great matter, no doubt, yet nothing in particular mentioned, but the ſolemn laying the foundation of the Monaſtery of *Saint-Albans*.

What manner of Council the next was, appeareth not, and therefore nothing can be con-

cluded therefrom, but that it was holden in the year 797.

That Council which is next produced, and in the year 800. and is called in great Letters, *Concilium Provinciale*, which he cannot Grammatically construe to be a Parliament; yet in the Preface it it said, that there were *Viri cujuscunque dignitatis*; and the King in his Letters to the Pope, saith concerning it, *Visum est cunctis gentis nostræ sapientibus*; so as it seemeth by this, and other Examples of this nature, that though the Church-motes invented the particular conclusions, yet it was left to the Witagenmote to judge and conclude them.

Pag. 321.

There can be no question, but the next three precedents brought by the Opponent, were all of them Church-motes: For the first of them, which is said to be holden in the year 816. is called a Synod, and both Priests and Deacons were there present, which are no Members of Parliament, consisting only of the House of Lords, and they all of them did, *Pariter tractare de necessariis & utilitatibus Ecclesiarum.* The second of them is called a Synodal Council holden, *Anno* 822. and yet there were then present, *Omnium dignitatum optimates*, which cannot be understood only of those of the House of Lords, because they ought all to be personally present, and therefore there is no Optimacy amongst them. The last of these three is called, *Synodale Conciliabulum*, a petty Synod in great Letters; and besides, there were with the Bishops and Abbots, many wisemen; and in all these respects it cannot be a Parliament only of the great Lords.

Concil Brit. Pag. 318.

Concil. Brit. Pag. 334.

The

The next Council ſaid to be holden in the year 823. cannot alſo be called properly a Parliament, but only a conſultation, between two Kings and their Council, to prevent the invaſion of the Danes; and the atteſts of the King's Chaplain, and his Scribe, do ſhew alſo that they were not all Members of the Houſe of Lords.

The Council citèd by the Opponent in the next place was holden, *Anno* 838. being only in nature of a Council for Law, or Judicature, to determine the validity of the King's Grant made to the Church of *Canterbury*, which is no proper work for a Parliament, unleſs it befal during the ſitting of the ſame.

The next is but a bare title of a Council ſuppoſed to be holden, *Anno* 850. And not worth its room, for it neither ſheweth whether any thing was concluded, nor what the concluſions were.

The work of the next Council alleadged to be holden, *Anno* 851. was to confirm the Charter of the Monaſtery of *Croyland*, and to determine concerning affairs belonging to the *Mercians*; and if it had been a Parliament for that people, it might be worthy of inquiry how regularly the Arch-Biſhop of *Canterbury*, and the Biſhop of *London*, and the Ambaſſadors from the Weſt Saxons could ſit amongſt them, and atteſt the concluſions therein made, as well as the proper members of that Nation.

He cometh in the next place to a Council, holden in the year 855. which is more likely to be a Parliament, than moſt of them formerly mentioned; if the Tithes of all *England* were therein given to the Church, but hereof I have ſet down my opinion in

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p. 45. the former part of the Diſcourſe. And though it be true, that no Knights and Burgeſſes are therein mentioned, as the Opponent obſerveth out of the Title; yet if the body of the Laws be duly conſidered, towards the concluſion thereof it will appear that there was preſent, *Fidelium infinita multitudo qui omnes regium Chirographum Laudaverunt, Dignitates verò ſua nomina ſubſcripſerunt.* And yet the Witagen motes in theſe times began to be rare, being continually interrupted by the invaſions of the Danes.

Concil. Brit. Pag. 350.

The three next Councils alleadged to be in the years 930. 944. 948. Were doubtleſs of inferiour value, as the matters therein concluded were of inferiour regard, being ſuch as concern the paſſing of the King's Grants, Infeodations and Confirmations.

Concil. Brit. Pag 480.

The Council mentioned to be in the year 965. is ſuppoſed to be one and the ſame with the next foregoing, by Sir *Henry Spelman*, which calls it ſelf a General Council, not by reaſon of the general confluence of the Lords and Laity, but becauſe all the Biſhops of *England* did then meet. The *Primi* and *Primates* were there, who theſe were is not mentioned; but its evident that the King of Scots was there, and that both he and divers that are called *Miniſtri Regis*, atteſted the Concluſions: It will be difficult to make out how theſe ſhould be Members of the Houſe of Lords, and more difficult to ſhew a reaſon why in the atteſting of the Acts of theſe Councils which the Opponent calls Parliaments, we find ſo few of the Laity, that ſcarce twelve are mentioned in any one of them, and thoſe to deſcend

ſcend ſo low as the *Miniſtri Regis*, to make up the number.

Five more of theſe inſtances remain, before the coming of the Normans.

The firſt of which was in the year 975. and in a time when no Parliament, according to the Opponents principles could ſit, for it was an *Inter regnum.* *Concil Brit. Pag. 490.*

The two next were only Synods to determine the difference between the Regulers, and the Seculers, in the King's abſence, by reaſon that he was under age; and they are ſaid to be in the year 977 and 1009. But it's not within the compaſs of my matter to debate their dates.

The laſt two were Meetings or Courts for Judicature, to determine the Crime of Treaſon, which every one knows is determinable by inferiour Courts before the high Steward or Judges, and therefore not ſo peculiar to a Parliament, as to be made an argument of its exiſtence. And thus are we at an end of all the inſtances brought by the Opponent, to prove that Parliaments before the Norman times conſiſted of thoſe whom we now call the Houſe of Lords. All which I ſhall ſhut up with two other Notes taken out of the Book of Councils, publiſhed by Sir *Henry Spelman.*

The firſt of which concerneth a Grant made by *Canutus*, of an exemption to the Abby of *Bury* Saint *Edmunds*, in a Council, wherein were preſent Arch-Biſhops, Biſhops, Abbots, Dukes, Earls. *Cum quamplurimis gregariis militibus, cum populi multitudine copioſa votis regiis unanimiter conſentientes.* The other taken out of the Confeſſors Laws, which tells *Pag. 534.*

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us that Tithes were granted to the Church, *A Rege Baronibus & populo.* And thus shall leave these Testimonies to debate with one another, whiles the Reader may judge as seemeth most equal to himself.

Pag. 621.

Being thus come to the Norman times, and those ensuing; I shall more summarily proceed with the particulars concerning them, because they were times of force, and can give little or no evidence against the Customs rightly setled in the Saxon times, which I have more particularly insisted upon, that the Original Constitution of this Government may the better appear. Now for the more speedy manifesting of the truth in the particulars following; I shall pre-advise the Reader in three particulars.

First, that the Church-motes grew more in power and honour, by the aid of the Normans Law, refusing the concurrence and personal presence of Kings, whom at length they excluded from their Councils with all his Nobles; and therefore it is the less wonder, if we hear but little of the Commons joyning with them.

Secondly, that the Norman way of Government grew more Aristocratical than the Saxon, making the Lords the chief Instruments of keeping Kings above, and people underneath; and thus we meet with much noise of meetings between the King and Lords, and little concerning the grand meetings of the Kings, and the representative of the people; although some foot-steps we find even of them also. For Kings were mistaken in the Lords; who meaned nothing less than to serve them with the peoples liberties,

Liberties, together with their own, which they saw wrapped up in the gross.

Thirdly, by this means the Councils of the King and Lords grew potent, not only for advice in particular occasions, but in matters of Judicature, and declaring of Law, ordering of Process in Courts of Pleas; which in the first framing were the Works of the Wise and Learned men, but being once setled, become part of the Liberties of every Free-man. And it is not to be doubted but these Councils of Lords did out-reach into things too great for them to manage, and kept the Commons out of possession of their right, during the present heat of their ruffling condition, yet all this while could not take absolute possession of their Legislative power.

I now come to the remainder of the particular instances produced by the Opponent, which I shall reduce into several Categories, for the more clear satisfaction to the Reader, with less tediousness.

First, it cannot be denied but the Council of Lords gave advice to Kings in Cases of particular emergency, nor is it incongruous to the course of Government, even to this day, nor meet that the Parliament should be troubled with every such occasion, and therefore the giving of advice to *William* the Conqueror, what course he should take to settle the Laws of *England* according to the instances in Councils holden, *Anno* 1060. and 1007. And to gain favour of the great men, according to that in *Anno* 1106. and in the manner of endowment of the Abby of *Battel*, as in pag. 25. of the Opponents discourse: and what to do upon the reading of the Pope's Letter, according to that in *Anno* 1114.

And whether the Pope's Legate ſhould be admitted, as in pag. 18. And how King *Steven* and *Henry* ſhall come to agreement, as *Anno* 1153. And how to execute Laws by Judges and Juſtices *Itinerant*, as *Anno* 1176. And touching the manner of ingaging for a voyage by *Croiſado* to *Jeruſalem*, *Anno* 1189. And to give anſwer to Embaſſadors of a Foreign Prince, pag. 25. And how King *John* ſhall conclude peace with the Pope, *Anno* 1213. Where nevertheleſs *Matth. Paris* ſaith, was *Turba multa nimis*: I ſay all theſe might well be done by a Council of Lords, and not in any poſture of a Parliament; albeit, that in none of all theſe doth any thing appear, but that the Commons might be preſent in every one, or many of them all.

Pag. 23.

Secondly, as touching Judicature, the Lords had much power therein, even in the Saxon times, haveing better opportunities for Knowledge and Learning, eſpecially joyned with the Clergy, than the Commons in thoſe times of deep darkneſs, wherein even the Clergy wanted not their ſhare, as in the firſt part of the Diſcourſe I have already obſerved. Whatſoever then might be done by Judges in ordinary Courts of Judicature, is inferiour to the regard of the Parliament; and therefore the Plea between the Arch-Biſhop and *Ethelſtan*, concerning Land, inſtanced, *Anno* 1070. And between *Lanfranke* and *Odo*, *Anno* 1071. *and between the King and Anſelme*, *pag.* 15, 16. and the determining of Treaſon of *John* (afterwards King) againſt his Lord and King *Richard*, pag. 23. And the difference concerning the title of a Barony between *Mowbray* and *Scotvile*, pag. 25. And giving of ſecurity of good behaviour by

by *William Brawſe* to King *John*, pag. 26. All theſe might well be determined only before the Lords, and yet the Parliament might be then ſitting or not ſitting, as the contrary to either doth not appear, and therefore can theſe form no demonſtrative ground to prove that the Parliament conſiſted in thoſe times, only of ſuch as we now call the Houſe of Lords.

A third work whereby the Opponent would prove the Parliament to conſiſt only of the Houſe of Lords, is, becauſe he findeth many things by them concluded touching the ſolemnization, and the ſetling of the ſucceſſion of Kings; both which, he ſaith, were done by the Lords in Parliament, or thoſe of that Houſe; and I ſhall crave leave to conclude the contrary: For neither is the Election, or Solemnization of ſuch Election, a proper work of the Parliament, according to the Opponents principles, nor can they prove ſuch Conventions, wherein they were to be Parliaments. Not the Election of Kings, for then may a Parliament be without a King; and therefore that inſtance concerning *William Rufus*, pag. 16. will fail, or the Opponents principles, who will have no Parliament without a King.

The like may alſo be ſaid of the inſtance concerning King *Steven*, pag. 18. Much leſs can the Solemnization of the Election by Coronation, be a proper work for the Parliament: Nevertheleſs, the Opponent doth well know that both the Election of a King, and the Solemnization of ſuch Election by Coronation, are Spiritleſs motions, without the preſence of the people; and therefore

though his instance, page 17. concerning the Election of *Henry* the First, by the Bishops and Princes, may seem to be restrictive as to them, yet it is not such in fact; if *Matthew Paris* may be believed, who telleth us, that in the *Conventus omnium*, was *Clerus* and *Populus universus*, and might have been noted by the Opponent out of that Learned Antiquary, so often by him cited, if he had pleased to take notice of such matters.

Mr. Selden's Titles of Honour.

A fourth sort of Instances, concerneth matters Ecclesiastical, and making of Canons; and hereof enough hath been already said, that such Work was absolutely challenged by the Church-motes, as their proper Work; and therefore the Instance, page 16,17. of the Council in *Henry* the First's time, and the Canons made by the Bishops there; and that other called by *Theobald* Arch-Bishop of *Canterbury*, and instanced by the Opponent, page 19. I say, both these do fail in the conclusion propounded.

Fifthly, as touching the most proper Work of Parliament, which is, the making of Laws concerning the Liberties and Benefit of the people; the Opponent produceth not one instance concerning the same, which doth not conclude contrary to the proposal; for as touching those two instances in his thirteenth page, *Anno* 1060. they concern not the making of Laws; but the reviving of such as had been disused formerly, which might well enough be done by private Council. But as to that in his fifteenth page, of the Law made by the Conqueror, concerning *Remigius*, Bishop of *Lincoln*, although it be true, that we find not the particular Titles of Knights,

Knights, Citizens and Burgeſſes, yet beſides the Council of Arch-Biſhops, Biſhops and Princes, we find the Common Council; for ſo the words are, *Communi Concilio, & Concilio Archiepiſcopus, Epiſcopus, Abatus, & omnium Principum*, although the Opponent would ſeem to wave theſe words, *Et Concilio*, but putting them in a ſmall Character, and the reſt in a voluminous Letter, that the Readers eyes might be filled with them, and over-look the other. *Tit. Honour, pag. 709.*

Secondly, as to the inſtance of the Council at *Clarindon*, in his nineteenth page, which he citeth out of *Matthew Paris*, *Matthew Weſtminſter*, and *Hoveden*, although he pleaſeth to mention the ſeveral ranks of Great Men, and thoſe in black Letters of a greater ſize; and ſaith, That not one Commoner appears, yet Maſter *Selden's Hoveden*, in that very place, ſo often by the Opponent cited, tells him, that both *Clerus* and *Populus* were there.

Thirdly, the Opponent citeth an inſtance of Laws made by *Richard* the Firſt, in his twenty fourth page, and he ſetteth down the ſeveral ranks of Great Men, and amongſt the reſt, ingeniouſly mentioneth, *Milites*, but it is with a Gloſs of his own, that they were Barons that were made Knights, when as formerly Barons were mentioned in the general, and therefore how proper this Gloſs is, let others judge; eſpecially ſeeing that not only *Milites*, and *Milites Gregorii*, bnt even *Miniſtri*, were preſent in ſuch conventions, even in the Saxon times: And Maſter *Selden* in the former known place, mentioneth an Obſervation, that, *Univerſi perſonæ qui de Rege tenent in Capite, ſicut eæteri* *Tit. Honour, pag. 703.*

cæteri Barones debent intereſſe judiciis curiæ Domini Regis cum Baronibus.

John's

Fourthly, he citeth in his twenty fifth *pag.* another inſtance in King *Jame's* time, in which, after the aſſent of Earls and Barons, the words, *Et omnium fidelium noſtrorum*, are alſo annexed, but with this conceit of the Opponents, that theſe *Fideles* were thoſe that adhered to the King, againſt his Enemies; be it ſo, for then the Commons were preſent, and did aſſent, or they may be, ſaith he, ſome ſpecially ſummoned as Aſſiſtants; take that alſo, and then all the true hearted in the Kingdom were ſpecially ſummoned, and were there, ſo as the concluſion will be the ſame.

In the fifth place, he cited a ſtrange precedent (as he calls it) of a Writ of Summons in King *John's* time, in his twenty ſeventh page, wherein *Omnes milites* were ſummoned, *Cum armis ſuis*, and he concludes therefore the ſame was a Council of War.

Firſt, becauſe they were to come armed, its very true, and ſo they did unto the Councils in the ancient Saxon times, and ſo the Knights of the Counties ought to do in theſe days, if they obey the Writ, *Duos Milites gladiis cinctos*, &c.

Secondly, he ſaith, That the Knights were not to come to Council; that is his opinion, yet the Writ ſpeaks, that the *Diſcreti Milites* were to come, *Ad loquendum cum Rege de negotiis regni*: It's true, ſaith he, but not, *Ad tractandum, & faciendum, & conſentiendum*: It's true, it's not ſo ſaid, nor is it excluded; and were it ſo, yet the Opponents concluſion will not thence ariſe, That none but the King, and thoſe who are of the Houſe of Lords were there preſent.

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The sixth and last instance mentioned by the Opponent, is in his thirtieth page, and concerneth Escuage granted to King *John*, who by his Charter granted, that in such cases he would summon Arch-Bishops, Bishops, Abbots, Earls, and the greater Barons, unto such Conventions by special Writs, and that the Sheriff shall summon promiscuously all others which hold in *Capite*; and thence he concludes, That none but the Great Lords, and the Tenants in *Capite* (whom he calls the lesser Barons) were present, but no Knights, Citizens or Burgesses; all which being granted, yet in full Parliament the Citizens and Burgesses might be there. For Councils were called of such persons as suited to the matter to be debated upon.

If for matters purely Ecclesiastical, the King and his Council of Lords, and the Church-men made up the Council.

If for advice in emergencies, the King and such Lords as were next at hand determined the conclusions.

If for Escuage, the King and such as were to pay Escuage, made up a Council to ascertain the sum, which was otherwise uncertain.

If for matters that concerned the common Liberty, all sorts were present, as may appear out of the very Charter of King *John*, noted in my former discourse, pag. 258. and also from an Observation of *Cambden*, concerning *Henry* the Third, *Ad summum honorem pertinet* (said he) *Ex quo Rex* Henricus *Tertius, ex tanta multitudine quæ seditiosa ac turbulenta fuit optimos quosque ad Comitia Parliamentaria evocaverit.* *Littlet. lib. 2. cap. 3.* *Brit. Pa. 122.*

Secondly,

Secondly, the Opponent takes that for granted that never will be, *viz.* That all King's Tenants *In Capite* were of the Houſe of Lords; when as himſelf acknowledgeth a difference, page 28. *viz.* that the Barons are ſummoned by Writs, *Sigillatim*, as all the Members of the Houſe of Lords are, but theſe are by general ſummons, their number great, and hard it will be to underſtand, how, or when, they came to be excluded from that Society.

I ſhall inſiſt no further upon the particulars of this Tractate, but demurr upon the whole matter, and leave it to judgement upon the premiſes, which might have been much better reduced to the main concluſion, if the Opponent, in the firſt place, had defined the word *PARLIAMENT:* For it was a Convention without the People, and ſometimes without the *KING*, as in the Caſes formerly mentioned, of the Elections of *William Rufus*, and of King *Steven*: And if ſometimes a Parliament of Lords only, may be againſt the King, and ſo without King or People; as in the Caſe between *Steven* and *Maud* the Empreſs, and the Caſe likewiſe concerning King *John*, both which alſo were formerly mentioned; poſſibly it may be thought as rational for the Commons in after Ages, to hold a Parliament without King, or Houſe of Lords; and then all the Opponents labour is to little purpoſe.

THE

THE CONTINUATION OF An Hiſtorical Diſcourſe of the Government of ENGLAND.

THE former times, ſince the Norman entry like a rugged Sea, by croſs Winds of arbitrary vapours, in, and about the Crown; and by Foraign engagements from the holy Chair, made the true face of affairs cloudy and troubleſom, both for the Writer and the Reader.

Hence forward, for the ſpace of three hundred years next enſuing, Kings by experience and obſervation, finding themſelves unequal to the double chace of abſolute Supremacy, over the Sturdy Laity, and Encroaching Clergy; you will obſerve, to lay aſide their pretenſions againſt the peoples Liberties, and more intentively to trench upon the Spiritualty, now grown to defie all Government, but that of Coveteuſneſs.

Nor would theſe times allow further advantage to Kings in this work, they being either fainted by the tickle Title

of the Crown, hovering between the two Houſes of *York* and *Lancaſter*, or drawn off to Foraign employments; as matters of greater concernment for the preſent well-being of the Kingdom, or for the ſpreading of the fame of ſuch as deſired to be renowned for valiant men.

It will be ſuperfluous to recount the particular atchievements formerly attained by theſe Eccleſiaſtical men; the former Treatiſe hath already ſaid what was thought needful concerning that: For the future, I ſhall even premiſe this, That the enſuing times being thus bleſſed with a Truce, or ſtricter League between the Kings and Commons; the errours in Government more readily do appear; the corruptions in natures of men more frequently diſcover themſelves; and thereby the body of the Statute-Laws begins to ſwell ſo big, that I muſt be enforced to contract my account of them into a narrower compaſs; and render the ſame unto the Reader, ſo far forth only as they ſhall concern the general ſtream of Government; leaving thoſe of privater regard, unto every Man's particular conſideration, as occaſion ſhall lead him: For what ever other men pleaſe to inſiſt upon, this I take for a Maxim, *That though the Government of a King is declared by his Actions, yet the Government of a Kingdom is only manifeſted by ancient Cuſtoms, and publick Acts of Parliament.*

And becauſe I have undertaken a general Survey of the Reigns of thirteen ſeveral Kings and Queens of this Nation; (for I ſhall not exceed the iſſue of *Henry* the eighth) and to handle each of them apart, will leave the Reader in a Wilderneſs of particulars, hard to comprehend in the general ſum; I ſhall therefore reduce them all into three heads, *viz.* Intereſt of Title, Intereſt of Prerogative, and Intereſt of Religion, the laſt of which ſwayed much the three Children of *Henry* the Eighth: the ſecond as much in their two Anceſtors, *viz. Henry* the Eighth, and *Henry* the Seventh, and the firſt in the three *Henries* of *Lancaſter*, and three ſucceeding Kings of the Houſe of *Yorke*: And becauſe *Edward* the Third and his Grandchild *Richard* the Second, do come under none of theſe

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Intereſts, I ſhall conſider them joyntly, as in way of *Exordium* to the reſt, although the courſe of the latter was as different from the former, as Luſt falls ſhort of a generous Spirit.

CHAP. I.

A ſum of the ſeveral Reigns of Edward *the Third, and* Richard *the Second.*

SEveral I may well call them, becauſe they are the moſt different in their ways and ends, of any two of that race that ever ſwayed their Scepter, and yet the entrance of the firſt gave countenance to the concluſion of the laſt. For the Scepter being caſt away, or loſt by *Edward* the Second, it was the Lot of his Son, *Edward* the Third, a Youth of fifteen years of age, to take it up; he knowing whoſe it was, and feeling it too heavy for him, was willing enough it ſhould return, but being overſwayed by Counſels drawn from reaſon of State, and preſſed thereto by thoſe that reſolved not to truſt his Father any more, he wiſely choſe to manage it himſelf, rather than to adventure it in another hand: but that is not all, for as its never ſeen that the Crown doth thrive after Divorce from the Scepter, but like a blaſted bloſſom, falls off at the next gale of adverſity: ſuch was the iſſue to *Edward* the Second, his Power once gone, his Honour followeth ſoon after; he had ceaſed to be King, and within a ſmall time did ceaſe to be *Edward.*

His Son, thus made complete by his Fathers ſpoyl, had the honour to be the Repairer of the ruines that his Father had made: and was a Prince which you might think by his ſtory, to be ſeldom at home, and by his Laws ſeldom abroad: nor can it be reconciled without wonder, that Pro-

vidence ſhould at once beſtow upon *England*, a courageous People, brave Captains, wiſe Council, and a King that had the endowments of them all. Otherwiſe it had outreached conceit it ſelf, that this ſmall Iſland, waſted by the Barons Wars, the people beaten out of heart by all Enemies, in the time of the Father, ſhould nevertheleſs in the time of the Son, with honour, wade through ſo many difficulties of mighty Wars on every ſide abroad, and devouring Peſtilence at home; and yet lay a platform of an *Opulent*, wiſe, and peaceable Government, for future Generations.

Yet he had his failings and misfortunes, a great part whereof may be attributed to infirmity of Age; which in the firſt part of his Reign was too little, and in the latter part too much. True it is, that Governours of the Perſons of Kings, may in ſome meaſure ſupply defects of Non-age, but ſeldom where the Governours are many, and never if they be ambitious: And it was this King's fate to miſcarry in both; for he had in his Youth twelve Governours by conſtitution, and they, two ſupreme by uſurpation, *Viz.* the Queen and *Mortimer*, till they were both conſumed in the flame which themſelves had kindled. And this diſparity wrought ſomewhat unſucceſsfully in the King's firſt War: For the generoſity of his ſpirit (himſelf being young and active) minded his Council to adviſe him employment in a Foraign War, rather than they would adventure its motion at home, leſt it might prove circular, which is moſt dangerous for Government, if the Prince be not under command of himſelf.

This firſt War was with *Scotland*, whoſe power was inferiour to that of *France*; the King young, and the danger nearer; and therefore though the laſt affront was from *France*, that more freſh in memory, and more poinant; yet the King was adviſed to give place, and ſpeak fair, till he had tryed maſteries with *Scotland*, and thereby ſecured his Rere: This he wiſely hearkned unto, and met with ſuch a ſucceſsful turn of Providence, that like an *O Yes*, before a Pro-

Proclamation, gives warning to *Scotland* that the Wheel is turned upon them; and that there is somewhat more than humane motion in the matter, that exasperates the English upon an enterprize, so often crossed by Providence hitherto; and the King also (being but a Souldier in hope as yet) to dare against those that had so shamefully foiled his Father, and also put himself already once to the Retreat.

And yet there did concurr a kind of necessity of second Causes; for the King found the Crown engaged, and the minds of the Scots so elate, as the English-man's case was not to live to Fight, but to Fight to live; and so imbittered against one another by the fierce Wars under the Barons, that nothing could quench the fire, but the withdrawing of the Brands into Foraign action, like some angry spirits that spoil their own bodies, unless they chide or fight it out with others.

In the first brunt with *Scotland*, the King gained nothing, but understanding of the humours of some of his great Lords; which once purged out, he renews the War, prevails, and after ten years stir (wherein he became a trained Soldier against the Scots) he wan the Cross, and then goes to play his Prize in *France*, to complete his Crown with the Flower-de-luce: Which was the great work of the rest of his Reign; in which four parts of five were Victorious; the fifth and last, was declining like some Gamesters, that win at the first, and for want of observation of the turning of the Dice, come off losers at the end.

For the King being rather satiated than satisfied with Victory and Honour, returned home to enjoy what he had, leaving his Son, the Black Prince, to pursue the War, and to act the Soldier alone, who now began to honour his Valour above his Father's. But, the Tide is spent, the Prince of Chivalry dies, the brave Commanders wasted; and the French too fickle to continue subject to the English, longer than needs must, tack about for another Adventure, and make

make it plain, that *France* is too bigg to be Garriſon'd by *England*, and that it will coſt *England* more to hold it than to have it.

His Religion was more to the purpoſe, than of any of his Predeceſſors ſince the *Norman* times; he reflected upon God in common events, more ordinarily than the general ſtream of the Clergy did in thoſe days: He loved, if not adored devout men and their prayers, and yet intentively diſclaimed opinion of merits in the Creature: He ſaw the Pope through and through, loved him but little, feared him leſs, and yet loſt neither Honour nor Power thereby. *Antiq Brit.*

His chief policy at home, was, to be much at home, great with his People, and they great with him; what the Parliament did, he accounted well done; he never queſtioned their Power, though he was over-reached in queſtioning their Wiſdom: For he that ſhall prefer his own wiſedom above that of the Parliament, muſt needs think himſelf extreamly Wiſe; and ſo much the more, to know himſelf to be ſuch: But the worſt of his fate was, to live to his Winter-age, and after fifty years Reign, or more, to dy in his minority under the rule of a Woman of none of the beſt fame, after he had ſo long enjoyed the honour of greateſt note in the Chriſtian World, in his days.

Rich. 2. Such was not *Richard* the Second, though the onely Son of that famous Chieftain, the Black Prince of *Wales*; (a renowned Son of a renowned Father) but (as a Plant tranſplanted into a Savage ſoyle) in degree and diſpoſition wholly degenerate, retained a tincture of the light inconſtancy of his Mother, and the luxurioufneſs of his Great Grandfather, *Edward* the Second, and running his courſe, came to his end.

Tho. lib. 4. Cap. 21. His entrance, however by colour of Inheritance, yet was a greater adventure than his Predeceſſors, that came in by election; upon the deſignation of his Father by his laſt Will, ſay ſome. For this man came in upon many diſadvantages, both of time and perſon: The times were very troubleſome

troubleſome, the Kingdom new wrapped up in a double War abroad, and (which is worſe) flooded with diſtractions at home, contracted partly by his Predeceſſor's weakneſſes in his decrepit eſtate, partly by a new intereſt of Religion ſprung up againſt the Papal Tyranny, from the Doctrine of *Wickliff*; all which required a very wiſe Man, and a brave Commander, in both which the King failed.

Religion now began to dawn through the foggs of Romiſh uſurpations and ſuperſtitions, aided thereto by a Schiſm in the triple Crown, that continued forty years, with much virulency abroad, and with as bad influence upon our Myters at home: Some of whom were called *Clementines*, others *Urbaniſts*, and yet none of them all worthy of either of the Names, in their proper ſignification. The Laity, though lookers on, yet were not quiet: For though Liberty be a hopeful thing, yet its dangerous to them that are not a Law to themſelves; eſpecially in matter of Opinion; for that arrains the rule, and layes the way open to licentiouſneſs. And now that the Liberty from the Keyes began to be taught as a duty of Religion, the inferiour ſort meet with Doctrines of licentiouſneſs, upon miſtake of the notion, and will acknowledge no rule, now they muſt be all at liberty: and thus ſprang up the inſurrection of the Servants and Bond-men againſt their Lords and Maſters under *Cade* and *Straw*; that might have brought the Common-Wealth into a hideous *Chaos*, had not the Lords and Great Men betimes beſtirred themſelves; and the King ſhewed an extraordinary ſpirit, or rather a kind of rage, that put it ſelf forth beyond the ordinary temper of his mind. Much of this miſchief was imputed to *Wickliff*'s Doctrine; for it is an ordinary thing to proclame all evils, concurring with the very joynt of Reformation, to be the proper fruits thereof; but I look upon it as a fruit of corruption that endeavours to ſtop the breath of Reformation in the birth; and there is ſomewhat of a hidden influence from Above in the thing; for it was not only the Cup of *England*, to be thus troubled, *Hiſt. Eccleſ. Ang.*

Antiq. Brit. 262. troubled, but *France* and other places had their portion ſuitable.

The King's minority rendred him unequal unto theſe contrary motions; he was in his eleventh year, when he entred the Throne; and (which was worſe) his years came on faſter than his Parts, but his work poſted before them all. The common help of Protectors left him yet more unhappy, for they were prepoſſeſſed with ſtrong engagements of particular Intereſts; and ſo were either not wiſe enough, or not good enough for all. This brought forth a third inconvenience, the change of Protectorſhip; and that change of Affairs and Intereſts, an uncertain good that brings forth a certain evil; for variety of Inſtruments and Intereſts move ſeveral ways, and though the end be one; the difference concerning the way, many times doth as much hinder the Journey, as ſo many blocks in the way.

The Protectorſhip was thrice changed, the King's Unkles had the firſt eſſay; any one of them was big enough for one Kingdom, but all of them together were too great to make one Protector. The Duke of *Lancaſter* would have done well alone, if he had been alone, and that work alone; but he being ſomewhat engaged with the *Wickliffiſts*, and ſo entangled with the Clergy, and other reſtleſs ſpirits, and drawn off by his private aim at the Crown of *Caſtile*, ſaw this work too much, and ſo he warily withdrew himſelf, leaving the Directory to a Committee of Lords, a ſoveraign Plaiſter, queſtionleſs, where the times are whole, but not for theſe diſtractions, wherein even the Committee it ſelf ſuffered it's ſhare: Thus the breach is made the wider; and for a cure of all, the Government is committed into one hand, wherein the Earl of *Warwick* acquitted himſelf well, for he was wiſe enough to obſerve ſuch as the people moſt honoured: And thus paſſed over the two firſt years of the King's Reign.

The remainder of the King's minority, was rather in common repute than in true account: For the King, however

ever young, took little more from the Protector, than he saw meet to colour his own commands with opinion of Regularity; and so his will came to full strength before his wisdom budded. Thus lifted up, he sets himself above all interests of Parliament, Protectors, Counsellors, Unkles, wise Men, and Law; leaving them all to be rules for those below. And so long as the King's desire is thus served, he is content to be reputed a Minor, and be as it were under protection of others, though not under their direction; and is content to continue thus until his two and twentyeth year: Some might think him very moderate, had he been moderate; but he forbears suing out his Livery so long as he may live without care, and spend without controul: For by this time the humour of his great Grandfather budded in him; he pawned his heart to young men of vast desires, and some say so inordinately, as he prostituted his Chastity unto them. And it's no wonder if the Revenues of the Crown are insufficient for such Masters. This the people soon felt, and feared their own Free-holds: for they are bound, saith he, not to see the Crown deflowred for want of maintenance, it's very true, nor to see the Crown deflowred of its maintenance. A Parliament therefore is called; in which diverse Lords associate, and prepare Physick for the King's lavish humour, which being administred, wrought for ten years after, till it had purged him of his Life, and the Kingdom of their King. 11 *Rich.* 2 *n.* 8. 13.

It was an Act of Parliament that gave power to fourteen Lords and others, to regulate the profits and Revenues of the Crown, and to do Justice to the people; this was to continue for one whole year. The Parasites no sooner found the effect hereof to their Cost, but the King grows sick of it, and finds an Antidote to over-rule Acts of Parliament, by Acts of Privy-Council, declares this ill-favoured Commission void; and the Contrivers, Advisers, and Enforcers, Traytors. To make it more Majestical, he causeth the Judges to Subscribe this Order, and so it becomes Law in repute. This foundation thus laid, he buildeth in haste an Impeachment of these Commissioners of High Treason; and

 supposing

ſuppoſing that they would not readily ſtoop, himſelf ſtoops lower; for he would put his Right to trial by battel, which was already his own, by the judgement of the Maſters of the Law: For ſo they may be well called, ſeeing they had thus Maſtered it. In this the King had the worſt, for he loſt his Honour and himſelf: (God hath a care of common right even amongſt Idolaters.) Then comes the Parliament of Wonders, wherein the King's Party are declared Traytors, and the chief Judges with their Law, judged by another Law. The King not medled with, thinks it high time to come out of his Minority, and aſſumes the Government of the Kingdom and himſelf, to himſelf, being now three and twenty years of Age; old enough to have done well if he had cared for it: But reſolving to follow the way of his own will, at length it led him to his own ruine: only for the preſent two things delayed it, *Viz.* The Authority, Wiſdom, and Moderation of his Unkles, eſpecially of the Duke of *Lancaſter*, now come out of *Spain*; and the great affection which the King pretended to the Queen, who had alſo gained a good opinion amongſt the People: The benevolent aſpect of the People, not for their own advantage, but for the Publick quiet, procured many Parlies and interviews between the King and People, and many Laws for the upholding of the Court and Government; although both War, Laws, Juſtice, and Councils, all are faint, as all is faint in that man that hath once diſmanned himſelf. This he perceives well enough, and therefore Peace he muſt have by any means. The Queen dies, himſelf being nigh eight and twenty years old, takes a Creature like a Wife, but in truth a Child of eight years old, and this is to get Peace with *France*. It's no wonder if now he hunts after unlawful game, and that being ill taken, brings all things out of order (*For abuſed Marriage never wants woe*:) Civil men are now looked upon as ſevere *Cato's*; and his Unkles, eſpecially the Duke of *Glocester*, with a jealous eye, which accompliſhed his death in the concluſion. The Dukes of *Lancaſter* and *York*, forſake the Court, Favourites

vourites ſtep into their rooms: The old way of the eleventh year is re-aſſumed; *Belknap* and others are pardoned, and made of the Cabinet. The pardon of the Earl of *Arundel* is adnulled, contrary to the advice of the major part, and the Arch-Biſhop, the Earl's brother is baniſhed. The Lords forſake the wilful King, ſtill the King's Jealouſie ſwells; The Duke of *Hereford* is baniſhed, or rather by a hidden Providence ſent out of the way for a further work. The Duke of *Lancaſter* dies, and with him all hope of moderation is gone, for he was a wiſe Prince, and the only Cement that held the joynts of the Kingdom in correſpondency. And he was ill requited, for all his Eſtate is ſeiſed upon. The Duke of *Hereford*, and his party are looked upon by the people as Martyrs in the Common Cauſe, and others as Royaliſts; Extremities haſten on, and Prerogative now upon the wing, is towering above reach. In full Parliament, down goes all the work of the tenth and eleventh years Parliament, which had never been, if that Parliament had continued by adjournment. The King raiſeth a power, which he calleth his Guard, of *Cheſhire*-men; under the terrour of this diſplaying Rod, the Parliament and King- 21 *Rich.* 2. dom are brought to Confeſſion: *Cheſhire* for this ſervice is *cap.* 9. made a Principality; and thus goes Counties up, and Kingdoms down. The King's Conſcience whiſpers a ſad meſſage of dethroning, and well it might be, for he knew he had deſerved it. Againſt this danger he intrenches himſelf in an Act of Parliament, That made it Treaſon, *To purpoſe and endeavour to depoſe* 21 *Rich.* 2. *the King, or levy War againſt him, or to withdraw his Homage,* *cap* 3. *hereof being attainted in Parliament.* And now he thought he was well guarded by Engagement from the Parliament, but he miſſed the right Concluſion for want of Logick: For if the Parliament it ſelf ſhall depoſe him, it cannot be made a Traytor, or attaint it ſelf, and then hath the King gained no more than a falſe birth.

But the King was not thus quiet, the ſting of guilt ſtill ſticks within, and for remedy he will un-law the Law; and gets it enacted, that all procurers of the Statute of 10 *Richard* the Second, and the Commiſſion and procurers of the King's

assent thereto, and hinderers of the King's proceedings are adjudged Traytors. All these reach only the branches, the root remains yet, and may spring again; and therefore in the last place, have at the Parliament it self: For by the same it's further declared, That the King is the sole Master of the propositions for matters to be treated in Parliament, and all gain-sayers are Traytors.

Secondly, That the King may dissolve the Parliament at his pleasure, and all gain-sayers are Traytors.

Thirdly, That the Parliament may not proceed against the King's Justices, for offences by them committed in Parliament, without the King's consent, and all gain-sayers are Traytors. These and the like Aphorisms once Voted by the *Cheshire*-men, assented unto by the Parliament, with the King's *Fiat*, must pass for currant to the Judges, and if by them confirmed or allowed, will in the King's opinion make it a Law for ever, That the King in all Parliaments is, *Dominus fac primum*, and *Dominus fac totum*. But the Judges remembred the tenth year, and *Belknap*'s entertainment, and so dealt warily; their opinion is thus set down, *It belongeth to the Parliament to declare Treason, yet if I were a Peer, and were commanded, I should agree:* So did *Thorning* under-write, and thereunto also consented *Rickill*, and Sir *Walter Clopton*, the last being Chief Justice of the King's Bench, the first Chief Justice of the Common-pleas, and the second another Judge of the same Bench. The sum in plainer sence is, that if they were Peers, they would agree; but as Judges they would be silent. And thus the Parliament of *England* by the first of these four last mentioned conclusions attainted themselves; by the second yielded up their liberties, by the third their lives, and by the last, would have done more, or been less: And to fill up the measure of all, they assigned over a right of Legislative power unto six Lords, and three Commons, and yet the King not content, superadded, that it should be Treason for any man to endeavour to repeal any of their determinations.

The Common-wealth thus underneath, the King tramples upon,

upon all at once; for having espyed the shadow of a Crown fleeting from him in *Ireland*, he pursues it, leaves the noble Crown of *England* in the base condition of a Farm, subject to strip and wast by mean men; and crosses the Irish Seas with an Army. This was one of *England's* Climacterical years, under a disease so desperate, that no hope was left but by a desperate Cure, by sudden bleeding in the head, and cutting off that member that is a principle of motion in the Body: For it was not many Months e're the wind of affairs changed, the King now in *Ireland*, another steps into the Throne; the noise hereof makes him return, afar off enraged: but the nigher he comes, the cooler he grows, his Conscience revives, his courage decays, and leaving his Army, his Lordship, Kingdom, and Liberty, behind, as a naked man submits himself to release all homage and fealty; to resign his Crown and Dignity, his Titles and Authority; to acknowledge himself unworthy and insufficient to Reign; to swear never to repent of his resignation; and thus if he will have any quiet, this wilful man must be content for the future, neither to will nor desire: And poor *England* must for a time be contented with a doleful condition, in which the King cannot rule, and the Parliament will not, and the whole body like a Chaos capable of any form that the next daring spirit shall brood upon it.

CHAP. II.

Of the State of the King and Parliament, in relation of it to him, and him to it.

A King in Parliament is like the first-born of *Jacob, The excellency of Dignity, and the excellency of Power*, but alone unstable as water: Examples of both these we have in these two Kings, *Whereof the first was Crowned by the Parliament, and Crowned it; the latter also Crowned it, but with Thorns,*

Thorns; and yet the Parliament in all held on that wise way, that it neither exceeded its own bounds, nor lost its own right.

I shall enter into the consideration of particulars under these heads: First, *In relation more immediately to the interest of the King:* Secondly, *To the interest of the Kingdom in general.* The King, though higher than all the people by the head, and so hath the Prerogative of Honour as the most worthy, yet his strength and abilities originally do rise from beneath, otherwise, he is but like a General without an Army, the Title big, but aery; and many times his person subject to so much danger, that instead of drawing the eyes of all the people to look upon him with admiration, they are drawn to look to him with observation, and in this respect he may be said to be less his own man, and more the Kingdoms than any of the inferiour sort. This befel in both these Kings in a special manner; each entring upon the grand government of a Kingdom before they were able to understand the work, or govern themselves: and therefore were under power of Protectors for the guard of their Persons and their Education, and of the Parliament for Counsel and Direction in Cases relating to the Kingdom. The child of a mean man when its Parents are dead, is *Filius Amici*, but of a King is, *Filius Populi*, to be by them trained up in such manner, that he may be *Pater Populi*, when he is come to age. In the mean time though he be a King, yet his Person like a precious Jem must not out of the Ring, but must be directed by Council, though under some kind of restraint, and the Counsellors all the while no Offenders in such Cases against the Prerogative Royal. 1 *E.* 3. *Stat.* 1. And therefore though it be true, that Kings grow faster than other men, and sooner come to full age than they, yet *Edward* the third, now in his sixteenth year might not pass over Sea into *France*, though it were for restoring of peace, but by direction of the Parliament: nor is it meet in such Cases, that Kings should stand upon the Prerogative of a Negative. Secondly, it may likewise be said, that his Family is less his own, as he is a Man, than another mans. For private Families are no further under the publick Law, than

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in relation to the publick peace, to punish after breach made. But the Families of Kings are looked upon by all in relation to the honour and profit of the publick; not only becaufe the King's fervants have by their nigh attendance upon his perfon, a more powerful influence into his actions, which may reflect a malevolent afpect upon the whole courfe of affairs, if they be not better ordered that are fo nigh him. But more efpecially in regard that the government and order of the Royal Family, trencheth deep upon the Honour of the Kingdom, and purfes of the people, who are concerned to fee the fame accommodated fuitable to the State and Port, which the Nation would bear forth to the World. And therefore for the Parliament to intermeddle in the King's Family, is not Foraign nor new: *Alice Piers* was a Familiar, if not of the Family of *Edward* the third, yet both her felf, and others of that Family were complained of as a grievance. *Richard* the fecond, was once a young man, and ever a young King; and what *Edward* the third wanted only in his youth, and in his infirm old Age, this man ever wanted: for he that knew not how to govern himfelf, how much lefs could he govern his Family? And if in this condition the Parliament become his Stewards, to fet a yearly Survey and Check upon his Servants and Family, in order to good order of the fame, and Kingdom, other wife men muft conclude, it did that which was juft: though *Richard* the fecond, and thofe of his mind think not fo. But this is not all; Kings have not only fuch as ferve the outward man, but fome that ferve their Confciences, of old time called Confeffors; in thefe days without name, for fear of Superftition, yet the thing remaineth ftill in fome well favoured Chaplain, and their work is to lead the King's Confcience in dark ways, or rather into them; commonly he hath a devout outfide, and that is the King's Idol: but if while his eye be towards *Jerufalem*, his mind be towards the dead Sea, the King is his; and then the blind leads the blind: Like fome *Ignis fatuus*, to fuch as know it not: No man is fo well known by his company as Kings are by thefe men, and thefe men

9 *Rich.* 2. *n.* 31.
11 *Rich.* 2. *n.* 23.

men by their Actions. Although ſome have been ſo witty as to cheat the whole generation of Mankind, by entertaining holy men to be their Chaplains: themſelves the mean time, without any ſpark of that holy Fire. Yet this King was not ſo cunning, he had a Confeſſor of his own choice, and according to his own heart, who was complained of as a grievance, and the Parliament removed him: So nigh they adventured, even to invade the King's own conſcience, if it may be called conſcience, that will acknowledge no Law, but that of its own mind.

5 *Rich.* 2. *n.* 17, 18.

Thirdly, The King's Revenue was under the check and control of the Parliament, for it befalls ſome Princes, as other men, to be ſometimes poor in abundance, by riotous flooding treaſure out in the leſſer currants; and leaving the greater channels dry. This is an inſupportable evil, becauſe it is deſtructive to the very being of affairs, whether for War or Peace. For the King's Treaſure is of a mixt nature, much of it being intended for publick ſervice, as himſelf is a publick perſon. And for this cauſe he hath Officers of ſeveral natures attending upon this Treaſury. Some for Land, ſome for Sea, ſome for the general Treaſure of the Kingdom, ſome for that of the houſhold, and ſome for the privy purſe: the common end of all being to maintain ſtate in time of peace, and ſtrength againſt time of War: becauſe it's no eaſie matter to maintain the juſt proportions for each of the ſaid ends, it is the leſs wonder that ſuch a brave Prince as *Edward* the Third ſhould labour under want for maintenance of the Wars: and ſo laviſh a Spendthrift as *Richard* the Second ſhould labour under more want to maintain his port and countenance in peace. And therefore, though it be true, that the publick Treaſure is committed to the King as the chief Steward of the Realm, yet it is as true, that he is but a Steward; and that the Supreme ſurvey of the Treaſure reſteth in the Parliament, who are to ſee that the Treaſure be not irregularly waſted, to reduce the ſame into order; and for that end to call the Treaſurers and Receivers to account, to ſee to the puniſhing of ſuch as are unfaithful, and

and encouraging of others that are faithful; for when by extravagant courſes, the Treaſure is waſted; by extraordinary courſes it muſt be ſupplied, which ever is out of the Subjects purſes. And in ſuch caſes it is great reaſon that they ſhould obſerve which way the courſe lies of ſuch expences. If then in ſuch caſes, ſometimes the Parliament hath ſtayed the iſſuing out of the King's Revenue for ſome time, or otherwiſe viewed and examined the ſame, charged it with conditions, 22 E. 3. *n.* 29. 14 R. 2. *n.* 15. limited it to certain uſes, and in caſe of miſuſer refuſed to levy or make payments, the caſe will be without diſpute, that the Parliament ordered the publick treaſure as they ſaw moſt need. But much more if we conſider how the greateſt part of this Treaſure was raiſed, *Viz.* Not from the old Revenues of the Crown, but by new impoſitions, levies, and aſſeſſments, laid upon the people, even what they pleaſed, and in what manner they thought meet, and not otherwiſe. Aids are lawful if they be legally given by common conſent of Parliament: Taxes if legally given by Parliament, are no leſs lawful, yet they muſt be collected in ſuch manner and by ſuch means as the Parliaments Order doth direct: Loans of moneys to the King may be made by them that will, but the King muſt not demand them, becauſe the Subject hath no means to recover the debt. This trick had been lately tryed by *Edward* the Second, much money he got, and it was repayed by the order of the Parliament. But of all the reſt, nothing ſhewed more abſolute Authority in the publick Revenue, than the care that was had of the Demeſnes of the Crown, for whereas the expences of Kings grew ſo vaſt, that neither the yearly Revenue could ſuffice, nor Aids, Aſſeſſments, and Taxes could ſatisfie, however ordinary they in theſe times were become; rather than Kings would contain themſelves they would invade their own Demeſnes, by pawning, ſelling, and giving them away, either for love or money; and thus was poverty treaſured up againſt the future, both for King and Crown. The Parliament eſpying this leak that was like to undo all, applyed a ſpeedy remedy, undoing what was

2 *Rich.* 2. *n.* 12. 9 *Rich.* 2. *n.* 4. *or* 41. 14 *E.* 3. *n.* 6. 27 *E.* 3. *n.* 8. 9 *R.* 2. *n* 40. 15 *E.* 3 *n.* 16. 14 *E.* 3. *cap.* 20 25 *E.* 3. *n.* 16. 1 *E.* 3. *tit.* 1.

done, and undoing ſome by an Act of Reſumption, and thereby taught Kings to look to their honour better for the future; and people alſo to take heed of medling with ſuch conſiderated matters, and to know that he that hath ſuch in his poſſeſſion, hath them by a crack'd Title that cannot be amended but by Act of Parliament.

1 *Rich.* 2. *n.* 48.

Fourthly, an Engliſh King is no Out-law, nor can he do any wrong, though the man may: he hath a double relation, one as a King, the other as a Man, and the uniting of both in one perſon, hath cheated many a man of his Judgement in the Caſe of prerogative: he hath a double will, and theſe many times contrary, equally as in other Relations; and in this contrariety, ſometimes the King overcomes the man, and ſometimes the man the King; ſo as if any man, the King hath much more cauſe to cry out, *O miſerable Man*: Theſe divers wills are generally led by diverſe rules: One of a man, which many times reacheth no higher than the Affections; and if the man be weak, they deſerve little better name than Luſts. The rule of a King is Law, or Councils, of theſe in place; and unto theſe in all prudentials, he muſt ſubmit his judgement and will, as he is a King: nor can he do otherwiſe: unleſs he will preſume to be wiſer than his Council: Suitable hereunto doth that clauſe in one of the Statutes of theſe times conclude, *Viz. That the King is bound by his Oath, to paſs all Laws that are for the good of the Kingdom*: For were the power of election, or determination of the point only in the King, then were the Oath in vain, nor is the Parliament at all (in caſe of the King's diſſent) to judge of the convenience or inconvenience of propoſals made for the good of the whole body, according to that power which is exerciſed in theſe times: Nor is it rational to inferr here from that, if Law and Council be the rule of a King, then the obedience of the people unto this King muſt be in order to Law and Council, otherwiſe the diſobedience cannot be determined to be againſt the King, but againſt the Man; and though againſt the private will of the Commander, yet not againſt the Law, nor therefore can it be ſaid illegal

25 *E.* 3. *Proviſor.*

21 *E.* 3. *n.* 64.
3 *Rich.* 2. *n.* 38.
2 *Rich.* 2. *n.* 38.

legal or unjuſt. The Parliament in theſe times held forth this Doctrine plainly to the World, that it is their proper work in Caſes needful to do right to ſuch as are wronged by the King: his command is no Warrant in ſuch Caſes. If a man be wrongfully impriſoned by him, he ſhall be releaſed and ſet at liberty by them: Let his Act be never ſo authentical under the Broad Seal, it can take no man's right away. *Richard* the Second, did his utmoſt to ſatisfie and quiet the tumultuous Rabble under *Cade* and *Straw*; and granted ſtore of Manumiſſions to the Bond-men by Declaration, and by his Letters Patents, but not one of them good enough to deprive any one of the meaneſt of the Free-men of their rights in thoſe Bond-men. The privilege of ſhewing mercy, and granting pardon hath been anciently betruſted to the King, as an Overſeer of the execution of Law, yet he hath not that Prerogative, To have mercy on whom he will have mercy. Ever ſince this Nation had learned to read the Bible, Murther hath been excepted from mercy, nor did the Law ever allow any King any Prerogative to pardon that. *Edward* the Third, did not challenge any ſuch, not only bound thereto by his Coronation-Oath, but by publick Acts of State, declaring the ſame; yet becauſe the Parliament was not always ſitting, and Kings were ever ſubject to this Temptation, to favour Servants, by granting mercy to Malefactors; a general rule of Inhibition is made againſt all pardon to be granted by the King, in Caſe of Felony, but only in Caſes allowed by advice of the Council. It's true, that in the firſt times of *Richard* the Second, he liked not to be thus girt in his power, which he pretended was more at liberty in his Predeceſſors; poſſibly he meaned King *John*, and *Edward* the Second, who many times did what they liſted; yet, under his favour, no Law was ſo ſhameleſs, as to hold forth ſuch a power, till *Richard* the Second's Law countenanced it: But why do I call it a Law, which is only a Declaration by conſent of the Lords, ſuch as then were: the Commons would never own ſuch an opinion; and therefore it ſoon proved abortive; for within three or four years, by pub-

15 *E. 3. n. 6, 7.*

1 *E. 3. Vet. 1.* 15 *E. 3. cap. 3.* 11 *Rich. 2. n.* 11, 12, 15, 17.

5 *Rich. 2. n. 8,* 12, 13.

10 *E. 3. cap. 2.* 14 *E. 3. c. 15,* 2 *E. 3. cap. 2.*

13 *Rich. 2. St.* 2. *cap. 1.*

11 *Rich. 2. n.* 3. 6. 21 *Rich. 2. n.* 35.

lick Act of Parliament, it's peremptorily declared, that the King's pardon shall not extend to Murther: So as upon the whole matter it is plain, that it is not the King's will, though supported by the Council of Lords, and backed by the opinion of the Judges, that must be a rule for the government of this Kingdom, nor doth any Allegiance bind obedience thereunto, in Case where Justice, or the liberty of the people is concerned.

Three things yet remain which Kings have claimed to be their own, *Viz. Conferring Titles of Honour, and Places of Trust, and the Legislative Power.* The first is but a Feather, and not worthy of regard, yet it is plain that these times produce many precedents of Dukes, Marquesses, and Earls, made in Parliament, and possibly it may be apparent that the first motion of any such Title of Honour, did first fetch it's Original thence, if not in the Field. But it's not worthy of the labour. The second is more considerable, *Viz. The power of conferring Places of Publick Trust*: This, Kings have pretended unto, although in course of Congruity, it will be thought more meet, that it belongeth rather to that chief and grand Trust of the whole Kingdom committed to the Parliament; and the practice of these times is not much discrepant, whether we regard such as are for advice or execution. Of the first of these, are those whom we commonly call, the Privy-Council, whose advice in course toucheth first, upon the King's Person, but by reflexion worketh strong impressions upon the people, so far as the influence of the King's power extends. And therefore it's not beyond the Sphear of the Parliament to interpose and qualifie that influence, so as it may be for the general good of the whole Kingdom: For many times Kings are either above or beneath themselves; and in such Cases, if the Council be of the King's suit, he is of the deeper die, and proves more Malignant to the people. *Edward* the Third, growing into great opinion in the World, his proportion exceeds his own portion, and the peoples good wills to boot; they think the fault is in the Privy-Coun-
14 E. 3. n. 55. cil, and an Inquisition set upon it: So also they do in his fifty-

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eth year, when he grows downward. And the like in the beginning of *Richard* the Second's Reign, he being now a Youth, and therefore unstable in his Resolutions, and unable to make Election: So as upon the whole matter, if the King fall short in point of Judgement, or Resolution, or inordinate in his affections: But more especially where they observe the Major, or more considerable part of the Council to draw towards a design; in such Cases as these, the Parliament as it's own duty, undertook to settle a good Council about the King's person, that might advise him during their Recess. For the Privy-Council is never more it self, than when it is an Epitome of the Common Council of the Kingdom. In like manner such Officers as concern Execution of Law, and Counsel, are as narrowly to be enquired into: for if their motion be irregular, it's less material what the rule be: the Parliament therefore held it their duty to interpose in the Election of grand Officers of the Kingdom; such as are the Chancellors, Judges, and Justices, or to confirm or displace them, or bind them by Oath; the Rolls of the eighth, fourteenth, fifteenth, and thirty-sixth years of *Edward* the Third, and the sixth, tenth, and eleventh years of *Richard* the Second, do manifest this sufficiently.

50 *E.* 3. *n.* 10.
1 *Rich.* 2 *n.* 51
3 *Rich* 2. *n* 34.
5 *Rich* 2 *n.* 17, 18, 28.
6 *Rich.* 2. *n* 19

I have done with the Subject matter, or work of the Parliament in the mutual Relation of the King and it, the manner of proceeding was either joyntly with the King, or without him; and either joyntly with the two Houses, or or severally; and either immediately by themselves, or their Committees. As touching the first, it's evident, that in all matters wherein gain ariseth to the Crown from the people, by Subsidy, or otherwise, the strength of the Grant by Act of Parliament resteth in the two Houses, and that the King's Assent is but *Pro forma*, as touching that matter; and therefore such Grants have been made as tended in some measure to derogate, either from the King's wisdom, care, or fidelity, yet even these have passed with the Royal Assent, though the full Assent, or good will of the Person of the King was not

not correſpondent thereto: as in theſe Caſes formerly noted, where Subſidies were given with Limitations and Conditions, and upon rendring account to the people. And it is as evident, that where the King's Perſon is diſabled to underſtand (as in Caſe of Infancy) there the Royal Aſſent can bear little weight with it; but moſt of all in the King's abſence, where either the Aſſent is put thereto by Commiſſioners, that know not the King's particular mind, or the Act is done only by the Houſes, in nature of Ordinances; and yet theſe of force to bind all parties, but the King. But nothing more debaſed the Royal Aſſent in theſe times, than a trick that *Edward* the Third plaid in the midſt of the fulleſt ſtrength of his Government: It was in time of War, which never is time of good Husbandry and laying up, nor of ſober advice in laying out, nor of equity in levying and collecting money for the nerves of War. This forward Warrier in the heat of his Atchievements, finds his ſtrength benummed for want of money, he leaves off, comes home, rages againſt his Arch-Biſhop, to whom he had committed the care of proviſion for his War, and the Arch-Biſhop, as hotly falls upon ſome of the Treaſury in the Army on the one ſide, and upon others in the Countrey; whoſe oppreſſions, ſaith he, inſtead of bringing in money, made the people to give a ſtop thereto. A conteſt hereupon thus had, it was concluded by the power of the Parliament, that ſuch men ſhould be queſtioned, and that the Parliament from time to time ſhould call all Officers of State to account, and thereupon enſues a calm. After the Parliament ended, the King repeats the matter, it makes his heart ſick, he diſgorgeth himſelf by a proclamation made by advice of Nobles, and Wiſe Men, as he ſaith, and tells all the World he diſſembled with his Parliament, and what he did was done by dureſs of mind, to pleaſe for the time, and to gain his ends, which being now had, he by his proclamation revokes what he had done in Parliament, or endeavoured it: And thus is *England* put to School to learn to diſſolve three hard knots: Firſt, *Whether a King can diſſemble with his Parliament.* Secondly, *Whether* Edward *the Third*

37 *E.* 3. *n.* 34.
1 *Rich.* 2. *n.* 5.
5 *Rich.* 2. *n* 75
15 *E.* 3. *c.* 3.
Antiq. Brit. Eccleſ.
15 *E.* 3. 50.

Third his diſſembling aſſent makes a Law? Laſtly, *Whether by a Proclamation, by advice of Nobles and Wiſe Men, he can Declare that he diſſembled with his Parliament, and therein not diſſemble the Royal Aſſent, ſo as to bring all the Laws made in any Kings time into queſtion, at leaſt during his Life.* However the reſult may be, it's evident the Royal Aſſent gets no honour hereby, and the Statute as little, that hath ſuffered this proclamation all this time to paſs among the number of the Statutes in Print as a Law, when as many Statutes that are Laws of note are left out as uſeleſs.

Although in the general, the two Houſes joyned in every Act, *Ad extra*, yet, *Ad intra*, and in relation one to another, they had their ſeveral operations, the Houſe of Commons intermedled more in the matter of Fact, the Houſe of Lords in matter of right, although in either of theſe there is a mutual Aſpect from both: In matters of Judicature, much reſted with the Lords, and therefore it is ordained, that, *The Houſe of Lords ſhall remedy all offences contrary to the Law of Magna Charta*: And in caſes where no remedy is left, nor judgement by the Law, the matter ſhall be *determined in Parliament, and the King ſhall command execution to be done according to the Judgement of the Peers*: Which Laws ſeem to be but declarative of the former Law, and in the nature of reviving that power into Act which was formerly laid aſleep, and doth ſtrongly imply that the ultimate Act in Judicature reſted with the Lords, in relation not only to the Houſe of Commons, but alſo in relation to the King, whoſe work in ſuch caſes, is, not to judge above or with the Peers, but to execute their ſentence; and that carries with it a liſt, whereby the power of a King may appear not to be ſo ſupreme in making of the Law, as ſome would have it: for if his Judgement and Conſcience be bound by the Votes of the Peers in giving a Law, in caſe of a particular perſon, where the Law was not formerly known: Let others judge of the value of this Negative Vote, in giving Law to the whole Kingdom. It's true, that this Parliament was quarrelled by the King, and he kept it at a bay by a proclamation

15 *E.* 3. *c.* 1.
15 *E.* 3. *c.* 3, 4.

clamation that pretended Revocation, as far as a Proclamation could revoke an Act of Parliament; but it effected nothing, nor did the conteſt laſt long: Now though this Juriſdiction thus reſted in the Houſe of Lords, in ſuch Caſes, as well as in others; yet is it not ſo Originally in them, as to be wholly theirs, and only as they ſhall order it; for the Commons of *England*, have a right in the courſe and order of Juriſdiction, which (as the known Law) is part of their liberty: and in the ſpeedy execution of Juſtice, as well as they have right to have Juſtice done: and therefore, whereas in Caſes of Error, and delays, the Appeal was from the inferiour Court to the Parliament, which immediately determined the matter, and now the trouble grew too great by the encreaſe of pleas: For remedy hereof, a kind of Committee is made, of one Biſhop, two Earls, two Barons, who by the advice of the Chancellor, Treaſurer, and the Judges, ſhall make good judgement in all Caſes of Complaint of delay in Judgement, which Committee is not made by Order of the Lords alone, which they might have done in caſe Juriſdiction had been wholly and only ſhut up in their cuſtody, but by Act of Parliament, and joynt concurrence of the Commons with the Lords: For as the Commons challenge ſpeedy Execution of Juſtice, as one of their liberties: So alſo to be under the Juriſdiction of ſuch Judges, and Courts, as the Laws (in the making whereof, themſelves challenge a Vote) do eſtabliſh and appoint.

14 E. 3. cap. 5.

I will conclude this Chapter with the Conſtitution of the Parliament in theſe times. For, the difficulties that befel between the Kings and their people, or Houſes of Parliament, wrought two ſad effects, *Viz.* A propenſity to decline calling of Parliaments, ſo often as was uſed and expected; and when it aſſembled, as great a propenſity in the Members to decline their attendance; by means whereof, as the Hiſtorians tell us, the Parliament was ſometimes enforced to adjourn it ſelf for want of number ſufficient: the firſt of theſe aroſe from want of good will in the Kings; the other from want of courage and zeal in the people. The firſt of theſe was fatal and deſtructive to good Government; for though in diſtempered

Walſing. An. 1315.

distempered Parliaments it's good to withdraw, yet in distempered times it's necessary to meeet, and gain a right understanding of all parties; and therefore these times were so happy as to bind themselves by publick Acts of State to re-continue the Assembling of Parliaments. For the face of the Times represented unto all, that Agitations were like to be quick, violent, and to continue for some succession of Time: It's therefore safe, if not necessary, that every eye should be open, and Counsels ready for every Occasion. A Law at length is agreed upon, that *A Parliament shall be holden once every year, or more if need be.* But in thirty years the power of this Law is wasted out of mind, and the evil reviving, revives also the Statute, and yet they had thirteen or fourteen Parliaments in thirty years space, and not above three, or but once four years distance of time between any two of them in Succession. This was the fence of the Members of the Houses in their meeting, but at home, they had comely conceits; and it's found no less difficult to bring them to the meeting, than to continue the meeting according to the Law; being either loath to adventure their thoughts into the troublesome affairs of the publick, or their persons to expence and hazard: But the publick must be served, and therefore an Act of Parliament is made, *That all such Members as decline their appearance at the Parliament, after Summons made, shall be amerced, and the Sheriffs likewise that shall neglect return of Summons*: And the Statute implyeth that it was no introduction of a new Law, but a reviving of former Law now or lately disused, or a Custom now out of Custom. And to take away all Objection in point of charges and expences, another Law was made to establish the assessments, and levying of their Wages, upon the Lands that anciently were chargeable therewith, in whose hands soever the same shall come.

4 *E.* 3. *cap.* 14.

36 *E.* 3. *c.* 10.

1 *Rich.* 2. *c.* 4.

12 *Rich.* 2. *c.* 12.

I shall conclude with this, that the Parliament, though like a Garment, it sometimes covers the goodly feature and proportion of a well composed body, yet it keeps the same warm, and as a Shield is first in all dangers, and meets

with many a knock which the body feels not: This is their work and reward; It's true, that in the wearing it is felt heavy, but it is the easier born, if it be duly considered, that it is better to be so cloathed, than to be naked.

CHAP. III.

Of the Privy Council, and Condition of the Lords.

THe latter must make way for the former, for according to their personal esteem in their own Countreys, such is their Authority at the Board in joynt Councils: And it was one point of happiness in a sad time of War, that all men looked one way. The Lords were much addicted to the Field and could do much with *Edward* the Third, who was a brave Leader, and more with the people, who had been so long time used to the rough Trade of Soldiery, that they loved not to be at home about matters of Husbandry, wherein they had so little experience. And having so fair a Garland in their eye as *France*, it's no wonder if Domestick designs seemed meaner, or more dangerous. Thus did God do *England* a good Turn, although it was made for the present thereby, neither so rich or populous, as it might have been in a time of peace. This French heat wasted many a tumultuous Spirit, and Ennobled the Fame of the King and Lords, not only abroad, but won them much Honour and Repute of those that remained at home; and so by congregating Homogeneals, and severing Heterogeneals, rendred the body of the people more Univocal; which tended much to the settling of the joynts of this distracted Nation. A timely birth hereof, doubtless was the peaceable entry of *Richard* the Second, upon the Throne, and quiet sitting there; whilst as yet he was but a Child, the Princes of the blood many; and they of Generous, Active, and daring Spirits: yet do we not meet with a whisper in Story of any turbulent

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or aſpiring humour in them or the people, during thoſe tenderer times of that King's Reign. But after that he came to know more in himſelf than was to be found; and to outrear his abilities, having ſome of the Lords ready at his elbow to help him: theſe changed the King's courſe, although the general part of that Noble Band kept ſtill their Array; and retaining the body of the people in due compoſure, thereby declared themſelves to be the King's Friends, though the others were *Richard*'s Favourites, ſo as he was fain to ſtoop to occaſion, and ſubmit to be a King, that would have otherwiſe been more or leſs. And thus the Lords were become Supporters to the Crown, Studds to the Throne, and a Reſerve to the people, againſt the violent motions of an unbridled mind in their King; who ſeeing them ſo united, and endeavouring to break them into parties to obtain his deſire, loſt both it and himſelf. It is a degree of cleanly modeſty to impute the miſcarriages of unruly Kings, to their Council: For however during their minority, Counſellors are more rightly Officers of State; yet when Kings will be their own Men, their Counſellors are no other than the breath of the King's own breaſt; and by which a King may be more truly diſcerned than any man by his boſom Friends. *Edward* the Third, was a man of a publick Spirit, and had a Council ſuitable to his aim: *Richard* the Second, a Man that deſired what him pleaſed, would have what he deſired; and a Council he had that ſerved him in all: for God anſwers the deſires of Mens hearts in Judgement as well as in Mercy; and a ſore Judgement it is both to King and people, when the corrupt deſires of the King are backed by a flattering Council.

It muſt be granted that the Privy Council of Kings, hath been an old ginn of State, that at a ſudden lift could do much to the furthering of the preſent Eſtate of publick Affairs: Nevertheleſs, through the Riot of Kings, their Deſigns generally tended to make more work for the Parliament than to diſpatch; to do much, rather than well; like works for ſale, rather than for Maſter-piece, and ſome-

times to undermine, yea, to out-face the Parliament it self, like some unruly servants that will put away their own Masters: Nor can it otherwise be expected, unless the King's elected ones be turned into the Parliaments Committee; or that constant annual Inquisition by Parliament be made into their Actions: for occasional inquiries breed ill blood, though no attainder be, nor are they easily undertaken; whereas constancy in such Cases makes the worst to be resolved but into a matter of common course.

The natural and original power of the Privy Council, is very obscure, because there are several Degrees of them that occasionally have been used, all of whom may deserve the name of Privy Council, in regard of the Parliament, which is the most publick Council of all the rest, and always hath a general interest in all Causes in the Kingdom.

The first of these, is that which was called, *The Grand Council of the King*, which as I think, was not the House of Lords, who are called by Summons, and were only to attend during the Parliament; but a body made up of them, and other wise men of his own retinue: and of this it seems there was a constant body framed, that were sworn to that service; for some in these times were sworn both of the Grand Council, and the Privy Council, and so entred upon Record.

16 E. 3. Memb. 5. in Dors.

The second of these Councils was also a great Council, and probably greater than the other; but this was called only upon occasion, and consisted of all sorts, like a Parliament, yet was none: An example whereof we have in the Ordinances concerning the Staple, which at the first were made by the King, Prelates, Dukes, Earls, Lords, and great Men of the Kingdom, one out of every County, City and Burrough, called together for that end; their results were but as in point of trial for six months space, and then were turned into Statute-Law by the Parliament. These two are *Magna Concilia*, yet without power, further than as for advice; because they had no ancient foundation, nor constant continuance. Another

27 E. 3. Stat. 2 28 E. 3. c. 13.

ther Council remaineth more private than the other, of more continual uſe, though not ſo legally founded, and this is called the King's Privy Council, not taking up a whole Houſe, but only a Chamber, or a Table, ſignifying rather communication of Advice, than power of Judicature, which more properly is in *Banco:* And yet the power of this grew as virile and Royal, as it would acknowledge no Peer but the Parliament, and uſurped the repreſentative of it, as that had been of the whole Kingdom. The ambition thereof hath ever been great, and in this moſt notoriouſly evident, that as it had ſwallowed up the grand Council of Lords, it ſeldom can endure the mention of a Parliament, but when Kings or Affairs are too rugged for their own touch. The platform of their power you may behold in this their Oath.

1. *That well and lawfully they ſhall counſel the King according to their beſt care and power, and keep well and lawfully his Counſels.* *Mag. Charta. Vet.*

2. *That none of them ſhall accuſe each other, of any thing which he had ſpoken in Council.*

3. *And that their lawful Power, Aid, and Counſel, they ſhall with their utmoſt diligence apply to the King's Rights.*

4. *And the Crown, to guard, and maintain, ſave, and to keep off from it, where they can without doing wrong.*

5. *And where they ſhall know of the things belonging to the Crown, or the Rights of the King, to be concealed, intruded upon, or ſubſtracted, they ſhall reveal the ſame to the King.*

6. *And they ſhall enlarge the Crown, ſo far as lawfully they may, and ſhall not accounſel the King in decreaſing the Rights of the Crown, ſo far as they lawfully may.*

7. *And*

7. *And they ſhall let for no Man (neither for love nor hate, nor for peace, nor ſtrife) to do their utmoſt (as far as they can, or do underſtand) unto every man in every Eſtate, Right, and Reaſon, and in Judgement, and doing Right ſhall ſpare none, neither for Riches nor Poverty.*

8. *And ſhall take of no Man without the King's leave, unleſs meat or drink in their Journey.*

9. *And if they be bound by Oath formerly taken, ſo as they cannot perform this without breaking that, they ſhall inform the King, and hereafter ſhall take no ſuch Oaths without the King's conſent firſt had.*

All which in a ſhorter ſum, ſounds in effect, that they muſt be faithful Counſellors to the King's Perſon, and alſo to his Crown; not to decreaſe the true Rights, but to enlarge them, yet all muſt be done lawfully. And Secondly, that they ſhall do right in Judgement to take no Fees, nor any other Oath in prejudice of this.

The firſt of theſe concern the publick only at a diſtance, and yet the point of encreaſing and diminiſhing of the Crown in the ſixth Section is captious, and may ſound as if there is a Legal enlarging of the Crown, whereof he that takes the Oath is to judge. A matter which only and properly concerns the Parliament to order and determine, or elſe farewel all liberty of the people of *England.*

The ſecond concerneth immediately the King in his politick capacity, but trencheth upon all Laws of the Kingdom, in the executive power; and all the motions in the whole Kingdom, either of Peace or War, following in the Rear, either immediately, or mediately, are under this notion intereſted into the tranſaction of the Privy-Council, to debate and determine the King's Judgement therein, unleſs it will determine alone. And how eaſie a thing it is for ſuch as have power of determining the Action by the Law, to ſlip into the determining of a Law upon the Action, and ſo to

rule

rule by Proclamation; experience taught ſucceeding times ſufficiently: Nevertheleſs, theſe times wherein Parliaments were every moment upon the wing, and kept this Noble Band in awe, by taking them into their Cogniſance, placing and diſplacing ſome or all of them, directing and binding them by Oath, as they ſaw occaſion, of which the Records are full and plentiful. I ſay, theſe times thus conſtituted added yet further encouragement to them, by giving them powers by Statute-Law, over and beyond what by ancient Cuſtom they had obtained. The King, and Council of Lords had anciently a power of Juriſdiction, that hath been in the firſt part of this diſcourſe already obſerved; yet it's very probable, that it was not any ſelect company of Lords, but the whole Aſſociation; for it's granted by all, that they had originally a principal hand in the Juriſdiction: And it's hard to conceive how any private number ſhould catch ſuch a power, if not by uſurpation. But the manner of acquiring, is leſs material; the principal conſideration reſteth upon the quality of this Juriſdiction. For it is evident that much difference hath been, both concerning the place and manner of exerciſing this Authority. In general, It muſt be granted, that all pleas, *Coram Rege*, were grounded upon Writs firſt purchaſed, and returnable, either in *Banco*, or in *Camera*, or in *Cancellaria*. And no difference at all will be concerning the Juriſdiction in *Banco*, for that was by the Courſe of the Common-Law; and the people held it one of their liberties to have one known courſe of Law, for determining matters of right and wrong. As touching theſe pleas, which were holden by Writs returnable in *Camera*, they were properly ſaid to be *Coram Rege & Concilio*, whoſe meeting was in the Council-Chamber, in thoſe days called the Star-Chamber. For other returns of Writs in the Star-Chamber do not we find, but ſuch as were in *Camera*, nor prohibitions from thence, but under the notion of the King's Council; and this *Camera*, as I ſaid, was the place of the joynt meeting of the Council, as well of thoſe of the Chancery and Benches, as of thoſe that attended upon matters of State. Now the influence

20 *Aſſ. pl.* 52

41 *E.* 3. *Rat. Clauſ.*

16. *Rich.* 2. *Memb.* 11. *in Dorſ.*

influence of Society in point of Judicature, principally aſpected upon ſome pleas belonging to the Crown: although even theſe alſo properly were determinable in the King's Bench; nor can I obſerve any rule to bound the powers of theſe two Judicatories; but this, that the Council-Table would pick and chuſe, and prohibit the King's-Bench as they pleaſed: and to that end would order Originals out of the Chancery, as they thought moſt meet: for it is obſerved by *Fleta*, that the King's Bench hath no juriſdiction of it ſelf, but by ſpecial Warrant; that is to ſay, by Original Writs returned thither: Nevertheleſs, it may ſeem that ſuch Crimes as are contrary to common honeſty, or the publick profit or peace, in a more exemplary way than ordinary; and therefore may be called, *Crimina læſi Regni*, or againſt the State: Theſe, I ſay, might more properly belong to the ſublime Judicature of the Council-Table; as knowing better how far the publick State was intereſted, or endamaged in ſuch Caſes, than the other Judges that were experienced only in ordinary matters of a more private concernment.

Fleta, li. 2. cap. 34.

To recite the particular Caſes upon record, concerning racing of Records, Forgeries, and other crimes of falſhood, conſpiracies, combinations, to abate and level the prices of Commodities, Riots, and ſuch like, will be ſuperfluous. In all which and others of that Cogniſance, the Sentence exceeded not Fine, and Impriſonment, or Ranſom; Neither yet were the Common-pleas ſo rural, but the Council-Table could reliſh them alſo, and digeſt them well enough, and therefore did not ſtick to prohibit the Courts of Common-Law, under colour of a ſtrange maxim. *That it is neither juſt nor honeſt for a Man to be ſued at the Common-Law, for a matter depending before the King and his Council:* No, though the Court of Common-Law had the precedency; and therefore although the right of Tyths being depending at the Common-Law, the Arch-Biſhop in oppoſition to the Juriſdiction, ſueth before the King's Council, and the proceedings at the Law are thereby ſtayed; and no wonder, for the Council

38 E. 3. Rot. Pat. Pſ. 1. Memb. 13.
39 E. 3. Pſ. 1. M. 13.
42 E. 3. Rot claus. Memb. 8. in Dorſ.
2 Rich. 2. Rot. Pat. Pſ. 1.
12 Rich. 2. cap. 12. 43.
Aſſ. Pl. 38.

Co Inſtit. 4. c. 5
22 Aſſ. pl. 75

Council-Table challenged to hold the ballance of all Courts of Law within their own Order: and so if any doubt concerning the Jurisdiction depended, the Council-Table gave the word, and all stooped thereto: But enough of the Subject matter, the manner follows; a new form of Process is taken up, that the Common Law and ancient Custom never knew, and which grew so noisom to the people, that complaints are made thereof as of common grievance, and remedies are thereto applyed by the Laws of these times. For whereas by the Grand Charter nothing could be done in Judgement, but according to the Laws of the Land, and in affirmance thereof, a Law was made in these times, that no Accusation, nor Attachment, nor forejudging of Life, or Member, nor seisure of Lands, Tenements, Goods or Chattels, should be against the form of the Grand Charter, and Law of the Land: the course of affairs grew so stale, that amongst other innovations, a trick of a new kind of Trial is brought forth, by suggestions upon Articles exhibited against any man before the Council-Table; and thereupon issued forth Attachments against the party complained of, by means whereof, and other courses (for they could also sequester) much vexation arose unto the people. Hereunto upon complaints multiplyed, a remedial Law is made; whereby it is Enacted, that all such suggests made, shall be carried to the Chancellour, Treasurer, and the King's Grand Council; and the Informer shall find surety to prosecute with effect, and to incurr the like penalty intended for the Defendant, if the Plaintiff's proofs be not complete; and then the Process of Law shall issue forth, and the Defendant shall not be taken against the form of the Great Charter; that is, he shall not be taken, until first the fault appear upon Record, by Presentment, or by due Process, or by original Writ, according to the Ancient Law of the Kingdom: Either therefore the Privy Council had no power to hold any pleas at all, or else no power of Trial: The first of these was concluded in open Parliament, and the second, as good as so: for if the first, then the second will come on undeniably. But

13 *Rich* 2. 12. *Tit. Prohibition.*

5 *E.* 3 *cap.* 9.

37 *E.* 3 *c.* 17.

25 *E.* 3 *c.* 4, 5.

42 *E.* 3 *c.* 3. *&* 4.

1 *Rich* 2. *n.* 87.

suppose all this be given up, yet was this Liberty to hold pleas so qualified, that the person could not be touched, till the thing did appear by Inquisition, and then in a legal way: such proceeding was had upon suggestion made against the City of *London*, in *Henry* the Third's time; for one of the Judges was first sent into the City to find the suggestion by a Jury, and then the Lord Mayor appeared before the Lords, and traversed the matter, and in a manner appealed, or rather demanded to be tryed, according to the custom of the City. And the like course do we find observed in our Law-Reports of these times, in a Case concerning the price of Wool, by a false Report. The foot of the whole account will be this, That the work of Judicature of the Privy Council in these times in Cases of Crimes, was to receive Articles, and award Inquisitions, and after return in nature of a Grand Inquest, to recover, Traverse, and to order Trial at the Common Law; and upon Verdict returned, to Fine and Ransom. In other Cases either of Right or Equity in matters of private property, they were determined, either by Judges of the Bench, or Chancery, although possibly the suit was *Coram Concilio*, for that all the said Judges were of the King's Council: And yet, as I dare not affirm, so I cannot deny, but it might also be possible that some matters, especially these of a greater consequence, either in their own nature, or in regard of the persons whom they concerned, were determined by the major Vote of the whole Council, in a prudential, or rather arbitrary way: But this was, *Invita Minerva*, and used so rarely, as the path is grown out of view, saving some few footsteps here and there remaining, which shew that the Grand Council of Lords had been there.

Fabian Vit. Hen. 3. Ann. 1141.

43. Ass pl. 38.

43 Ass pl. 38

CHAP.

CHAP. IV.

Of the Chancery.

IT is the birth of the King's power in Judicature, and may deserve the name of the first-born. For though it had no better Title in these later times, than *Officium*; because amongst other of the King's Escripts, it formed Writs remedial for such as had received wrong; yet even by that work, it was in repute for so much skill in the Law of the Land; that by the consent of all, it was as well able to advise a remedy, as to advise the Complainants where to have it: and yet it had one advantage further, that it was an Office of remembrance to the King, who is a person of great Trust in the Law, and gave such credit to all Acts done before him, as being entred into the remembrance, became of the highest nature of Record, against which no plea did lie. Amongst these, matters of debt and contract coming into the account, this Office taking notice of the Record, took cognisance of the thing, and for the executing thereof: and thus in these, and such like Cases; granted Judicial Writs, and so found out a way of Judicature, to as many Causes as the State would trust it with: and because it pretended Cognisance only of matters of Record before them, they found out a way of examining of witnesses by Commission, and returning their Depositions in writing; which being become a Record before them, they gave their sentence upon the whole matter, without the ancient ordinary Trial, *Per pares*: It becomes a kind of peculiar, exempting it self from the ordinary course in manner of Trial, and from the ordinary rules of Law, in giving of Sentence, and as a back door for the King's Arbitry, in case of Judicature in matters of Common pleas, as the Council-Table was in Crown-pleas, they both are looked upon with a very pleasing eye of Majesty, which loves not to be strait laced; yet all is embattelled under the colours of Equity, Honour, Conveniency, and Conscience; like a Monopoly that is bred

Miror. cap. 4. Sect. 2. Fleta, lib. 2. cap. 13.

Fleta, lib. 2. cap. 13. Sect. 8.

under the wings of the publick, but feeds it self upon it.

That this had attained the Title of a Court so anciently, as in King *Steven*'s time (as the Honourable Reporter noteth) I much question, by the Title that *Fleta* gives it in later times, nor under his favour, will that Testimony cited out of the History of *Ely* warrant it, but upon a mistaken ground of misplacing the note of distinction: for I take the words to be thus translated, *King* Etheldred *determined, and granted, that the Church of* Ely *should for ever in the King's Court hold the dignity of the Chancery, and not hold the dignity of the King's Court of Chancery:* Nevertheless, it's clear that these times brought it to that condition that it might well carry that name, if formerly it had not; For it grew very fast both in honour and power, and this not by usurpation, (though it did exceed) but by express donation from the Parliament. Yet is this power much darkned in the limits and extent thereof, chiefly in regard that the Chancellour is betrusted with many things, whereof there is no evidence for the Chancery to claim any cognisance. For he was in these times a person of many interests and relations, being one of the *Quorum*, in the Star-Chamber, of the King's Council, chief in the Chancery, most commonly a Clergy-man, and therewith Legate *à Latere*, and in these several Relations might act directly, and yet in several Courts. And therefore, though he had power with others, to punish neglects of Execution of the Statutes of Wines, by Act of Parliament, and also of the Statute concerning Victual, and to determine matters of controversie between parties in Cases depending before the Parliament, and in some matters that concern the King's Revenue; yet cannot these be said to be the proper work belonging to the cognisance of the Chancery, but to the Chancellour by special Commission in another Relation: Albeit, I cannot deny but the Court it self had cognisance in matters of as strange a nature, *Viz.* To punish disturbances of Merchants in their Trade, to see to the executing of the Statutes of Purveyors, and to remedy grievances contrary to other Statutes (which general words let in a wild liberty to that Court

Instit. 4. c. 8. fol. 78.

4 E. 3. cap 12. 9 E. 3. cap. 1. 14 E. 3. cap. 5.

27 E. 3. c. 26. 36 E. 3 c. 9. & cap. 13.

Court to intermeddle in Laws which were never intended for their touch) to punish Nusances according to discretion, to give remedy to Merchants upon the Statute of Staple; so that it's clear enough the Parliament intended it should be a Court, and gave their Seal to their power of Judicature. Nor as it seemeth, was this any regret to the Courts of Common Law, but as a thing taken for granted. For the Reports tell us, that if the King grants Tythes, arising from without the bounds of any Parish, the Patentee shall sue in the Chancery by *Scire Facias*, and shall there proceed to issue or demurrer, and then to the Common Law; where upon Trial, if the Defendant make default, the Plaintiff shall have Judgement, and Execution. And if the Heir be in Ward to the King, the Mother shall sue and recover her Dower in the Chancery. And they tell us, that it had power to prohibit Spiritual Courts, and Courts of Common-Law, yea, to over-rule or reverse Judgements: and yet the Common-Law held it's ground when it was concerned: for neither were all suits there by Bill, as in cases of Equity, nor determined according to such rules, nor did the power of Judicature rest in the breast of one Chancellour, but in him joyntly with other Council of the King, which were also learned Judges of the Law. For the Report informeth that *Edward* the Second, had granted a Rent in Tail to the Earl of *Kent*, who dying, his Son under Age, and Ward to the King, *Edward* the Third, seised, amongst other Lands, the Rent, and granted it to Sir *John Molins*: Upon Petition, the King refers the matter to the Arch-Bishop, and others of the Council, calling to them the Chancellor: A *Scire Facias* goes forth to Sir *John Molins*; he upon appearance, pleaded to the jurisdiction, as a case belonging to the Common-Law; but it would not be allowed, because it was to repeal the King's Charter.

12 *Rich.* 2. *c.* 12
27 *E.* 3. *c.* 24.
22 *Ass. pl.* 25
Bro. scire fac. 154.
24 *E.* 3. 73.
43 *Ass pl.* 32
24 *E.* 3. *pl.* 35.
39 *E.* 3. *fo.* 14.
21 *E.* 3. *fo.* 47.

And whereas, it was objected, that the reference was to the Arch-Bishop, and others, and therefore the cause ought not to be determined in the Chancery; it was resolved that it did properly belong to the Chancery, by the Law: And in the argument

Argument of the case, it appears clearly that the King's
43. Ass. pl. 35 Council there, were learned in the Law. And the same is yet more evident by the Title of Bills in those days exhibited in the Chancery, which was directed to the Chancellor, and the King's Council, and the rule given, *Per tout les Justices*; which I rather note for the shortness of the form of Bills in those days, far different from these times, wherein the substance of the complaint, however small in it self, is oftentimes blown out into so great a bubble, that it breaks to nothing: And the Statutes formerly mentioned do assert the same thing, as touching the King's Council. For though they speak of the Council or Chancery in the English Tongue, yet in the Original the words are, *Conceil en Chancery.*

Having thus touched upon the matters under the Judicatory of the Chancery, and Judges in the same: in the next place, the manner of proceedings comes to consideration. For it seems they had been formerly very irregular, and that contrary to the grand Charter; upon a bare suggestion in the Chancery, the party complained of was imprisoned, and no proceedings made thereupon: for remedy whereof, it was ordained, that upon suggestions so made, the complainant was to find Sureties to pursue the suggestions, and that the process of Law should issue forth against the party without imprisoning him, and that if the suggestions were not proved true, the complainant should incurr the like penalty that the Defendant should have done, in case he had been found
37 E. 3. c. 17. guilty: but afterwards this latter clause was altered by another Statute, because it was full of uncertainty; and it was
38 E. 3. c. 9. ordained, that in such case the Complainant shall be imprisoned, until he shall satisfie the Defendant of his damages: And furthermore, shall make Fine and Ransom to the King. But because that the Defendant many times held his advantage, even to Extremity; this course lasted not long, but a
17 Rich. 2. c. 6. new Law was made, which put the power of awarding damages in such cases into the Chancellour, to do according to his discretion: And thus the Chancery obtained power to award

award damages which they never had formerly, and the Chancellor, a Precedency both in the Chancery, and of the Council in the Court of Star-Chamber, and in many cases in the Exchequer: by the first he had a power in matters of *meum* and *tuum*; by the last in matters, *Mei* and *Regis*; and by the other in matters *Mei* and *Regni*. A considerable man certainly he was in the motions of Government; but how much more if he be made Arch-Bishop of *Canterbury*, Cardinal, and Legate *à Latere*; or Arch-Bishop, Lord Treasurer, and Legate *à Latere*; as these days had divers times seen. Extraordinary advancements bestowed upon the Nobility, brings Honour to the Throne, but if they be not men of noted worth, and uprightness, they make the Scepter stoop, by stirring up of envy in the Nobility, and indignation from the people. For seldom is it seen, that Advancements are fed from the Crown, though they be bred from thence; but either maintained by new supplies from the peoples purses, or the ruine or decay of some Officers more ancient than themselves, or both: And such was the condition of the Chancellour, he sucked fat from beneath, and blood and Spirits from the Grand chief Justiciar of *England*, and so reduced that Honourable Potentate, unto the Degree of Chief Justice of the King's Bench, leaving scarcely unto him the name or Title of Lord. One thing more remaineth, touching the election, or nomination of this Great Man. At the first, he was no better than a Register, or the King's remembrancer, or Secretary, having also the Honour to advise the King in such matters as came within the circuit of the Writings in his custody; and questionless, *Eo usque*, it's suitable to all the reason in the World, that he should be of the King's sole Nomination and Election; But when it befalls, that instead of advising the King, his word is taken to be the rule, and a Judicatory power put upon that; and unto this is superadded that Honourable Trust of keeping and governing the Great Seal of the Kingdom, with the continual growing power occasionally conferred upon him by the Parliament: He is now become no more the King's Remembrancer, but the Lord Chancellour of *England*, 43. *Ass pl.* 32.

and

and Supreme Officer of State. And it seems but reasonable that he should hold his place by publick Election, as well as the Grand Justiciar (whose Plumes he borrowed) and other Grand Officers of State did before him. For he that will have his Servant to work for another, must give the other that Honour of Electing him thereto; nor was this laid aside nor forgotten by these times, but a claim was put in for the Election or allowance of this principal Officer amongst others, the Parliament obtaining a Judgement in the case by the King's Confession, and so the thing is left to the judgement of future Ages, *Viz. Whether a King that can do no Man wrong, can dissemble the Royal Assent in Parliament, or declare himself legally in that manner by Proclamation?*

15 *E.* 3. *n.* 10. 15. 15 *E.* 3. *cap.* 3. 10 *Rich.* 2. *n.* 16. 10.

CHAP. V.

Of Admirals Courts.

THis is a third Court that maintained the King's Judicatory power, in a different way from that which is commonly called the Common-Law, and by many is therefore supposed, to advance the King's Prerogative, but upon mistaken grounds: It is very true, that the way is different from the common road, both in it's original, and in the course of proceedings; nor could it other be, considering the condition of the Nations, and the people of the same, interested in common traffick. The people thus interested, as much differed from the other sort of dry men (if they may be so called) as Sea from Land, and are in nature but as march-men of several Nations, that must concenter in some third way for the maintenance of commerce for peace sake, and to the end that no Nation may be under any other Law than it's own. The condition of the Nations in the times when civilized government began to settle amongst

amongſt them, was to be under the Roman Emperours, who having ſettled one Law in the general grounds throughout all Nations, made the Sea likewiſe to ſerve under one rule which ſhould float up and down with it, that men might know upon what Terms they held their own, whereſoever they went; and upon what terms to part with it for their beſt advantage: in its original therefore, this Law may be called Imperial, and likewiſe in the proceſs, becauſe it was directed in one way of trial, and by one Law, which had its firſt birth from the Imperial power; and probably it had not been for the common benefit of *Europe* to have been otherwiſe, at other time, or by other directories formed. Nevertheleſs, this became no Gemm of Prerogative to the Engliſh Crown, for if *England* did comply with Foraign Natives for its own benefit, it being an Iſland full of the Sea, and in the common Road from the moſt parts of *Europe* that border upon the Sea, and of delight in Merchandiſe, it is but ſuitable to it ſelf: and it did ſo comply, as it ſaved the main Stake by voluntary entertaining thoſe Laws without being impoſed upon by Imperial power: for the Saxons came into this Kingdom a free people and ſo (for ought yet appeareth to me) continueth to this day: I ſay that in thoſe firſt times, they did take into the conſideration of Parliament the regulating of the fluctuating motions of Sea-laws: nor were they then, or after, properly impoſed by the King's Edict. For though it were granted, that *Richard* the Firſt, reduced the Sea-Laws in the Iſle of *Oleron*; yet that the ſame ſhould be done without advice of Parliament in his return from the Holy-Land is to me a Riddle, conſidering what Hiſtories do hold forth concerning of his return through *Germany*, nor can that be good evidence to entitle Kings of *England* to a power, to make and alter Laws according to their private pleaſure and intereſt. Nor doth that Record mentioned in the *Inſtitutes*, warrant any ſuch matter, but rather on the contrary groundeth the complaint upon Laws, Statutes, Franchiſes, and Cuſtoms, Eſtabliſhed, and that this Eſtabliſhment was by the King and the Council.

Inſtit. 4. cap. 22. fol. 142. & 144.

This Law was of a double nature according to the Law of the Land, one part concerning the pleas of the Crown, and the other between party and party; for properly the King's Authority in the Admiralty is but an Authority of Judicature, according to Laws eſtabliſhed, which both for proceſs and ſentence are different from the Common-Law, as much as the two Elements do differ, yet not different in the power that made them: I ſhall leave the particulars to be enquired into, by them that ſhall mind it elſewhere, and only touch ſo much as ſhall reflect upon the main Government. This power was executed by Deputies diverſly, according as the times and opportunities were, for War or Peace, and either *tranſitu* or *portu*. What was done in time of War, or whilſt this Ship is out of the Engliſh Seas, comes not to our purpoſe, and therefore I ſhall not meddle with that, further than this, that in the firſt times Kings were wont to divide the work of Judicature, and of War into ſeveral hands. The power of War and Peace they committed unto men of approved courage and Skill in that ſervice, and therefore generally, not to the men of higheſt rank, who had neither mind nor Skill for a work of ſuch labour, dyet and danger: this power paſſed under divers names, ſometimes by grant of the cuſtody of the Sea-coaſts, ſometimes of the parts and Sea-coaſts, ſometimes by being made Captain of the Sea-men, and Mariners, and ſometimes Admiral of the Ships. It was a great power, and had been much greater, but that it ſuffered a double diminution; the one in the time, for three or four years commonly made an end of the command of one man, and at the beſt it was, *quam diu Regi placuerit*; the other diminution was in circuit of the power, for all the Maritine coaſts were not ordinarily under the power of one man, but of many; each having his proper precinct upon the South, or North, Eaſt, or Weſtern ſhores: and under the Title of Admiral in the times of *Edward* the Firſt, and forwards, who brought that Title from the Holy Land; nevertheleſs, about the end of the times, whereof we now treat; the cuſtody of the whole Sea began to ſettle in one

Gloſſ. fol. 16.

one hand, under the Title of Admiral of the Englisſh Seas, and the place was conferred upon men of the greateſt rank, and ſo continued ever afterward. The power of Juriſdiction, or Judicature all this while remained diſtinct, and it ſeems was ſettled in part in the power of the Sheriff and Juſtices. For by the Law the Sheriff and Juſtices had cogniſance of matters between the high-water, and the low-water mark, and what was done, *Super altum mare*, was within the directory of the Admiral, theſe were but few things, and of ſmall conſiderableneſs: the principal of them being concerning War or peace, and thoſe only within the Engliſh Seas. But after *Edward* the Third had beaten both the French and Spaniards at Sea, the people grew much more towards the Sea, and became ſo famous, that the greateſt Lords thought the Regiment of Sea-affairs worthy of the beſt of their Rank, and were willing with the Title of Admiral, whilſt they left the work to others; and ſo the Admiral became a perſon of more honour and leſs work, than he had been formerly. The greatneſs of the honour of this place thus growing, ſoon alſo began to contract greatneſs of power beyond what it had formerly; and this was principally in matter of Juriſdiction. For not contented with the power of a chief Juſtice of War and Peace within the Seas, which was his proper dominion: the Lord Admiral gained the ſame within the low-water mark, and in the main ſtreams below the next Bridge to the Sea, and in all places where Ridels were ſet; and yet theſe places were within the body of the County, Nor did he endeavour leſs to gain in matters of diſtributive Juſtice, for although he had a legal Juriſdiction in things done upon the open Sea, ſo far as to defend, order, determine, and cauſe reſtitution to be made, in caſes of damage done unjuſtly; yet was it no leſs difficult to keep this power within its own bounds, than the watry element upon which it floated; but it made continual waves upon the Franchiſe of the Land; and for this cauſe, no ſooner had theſe great men favoured of the honour and Authority of that dignity, but comes a Statute

15 *Rich.* 2. *c.* 3. *Dier.* 15. & 16. *El. mic pl.* 2. 8 *E.* 3. *Coronn.* 199.

to reſtrain their Authority in the Cogniſance of Caſes only,
13 *Rich* 2. c. 5 unto ſuch matters as are done upon the main Sea, as formerly was wont to be: and within two years after, that Act of Parliament is backed by another Act to the ſame purpoſe,
15 *Rich.* 2. c. 5 in more full expreſſions, ſaving that for Man-ſlaughter, the Admirals power extended even to the high water mark, and into the main ſtreams. And this leadeth on the next conſideration, *Viz.* What is the ſubject matter of this Juriſdiction, and Authority: I ſhall not enter into the depth of particulars, but ſhall reduce all to the two heads of Peace and Juſtice.

The Lord Admiral is, as I formerly ſaid, a Juſtice of Peace at Sea, maintaining the Peace by power, and reſtoring the peace by ſetting an Order unto matters of Difference, as well between Foraigners, as between the Engliſh and Foraigners; as may appear by that plea in the fourth Inſtitutes formerly mentioned. *p.* 41.

Secondly, That point of Juſtice principally concerneth matters of Contract, and complaints for breach of Contract; of theſe the Admiral is the Judge, to determine according to Law and Cuſtom. Now as ſubſervient unto both theſe, he hath Authority of command over Sea-men, and Ships that belong to the State, and over all Sea-men and Ships in order to the ſervice of the State, to arreſt and order them for the great voyages of
25 *Rich* 2 c. 3. the King and the Realm, and during the ſaid voyage; but this he cannot do without expreſs Order, becauſe the determining of a voyage Royal, is not wholly in his power.

Laſtly, the Lord Admiral hath power, not only over the Seamen ſerving in the Ships of State, but over all other Seamen,
2 *Rich.* 2. c. 4. to arreſt them for the ſervice of the State; and if any of them run away without leave from the Admiral, or power deputed from him, he hath power by enquiry to make a Record thereof, and certifie the ſame to the Sheriffs, Mayors, Bailiffs, *&c.* who ſhall cauſe them to be apprehended and impriſoned. By all which and divers other Laws, not only the power of the Admiral is declared, but the original from whence it is derived, namely from the Legiſlative power of the Parliament,

and

and not from the ſingle perſon of the King, or any other Council whatſoever. But enough hath been already ſaid of theſe Courts of State, in their particular Precincts. One general intereſt befalls them all: that as, they are led by a Law much different from the Courts of Common-Law, ſo are they thereby the more endeared to Kings, as being ſubſervient to their Prerogative, no leſs than the Common-Law is to the peoples liberty: in which condition being looked upon as Corrivals, this principal Maxim of Government will thence ariſe, That the bounds of theſe ſeveral Laws are ſo to be regarded, that not the leaſt gap of intrenchment be laid open each to other, leſt the Fence once broken, Prerogative or Liberty ſhould become boundleſs, and bring in confuſion inſtead of Law.

CHAP. VI.

Of the Church-mens Intereſt.

But the Church-mens intereſt was yet more Tart, ſtanding in need of no leſs allay, than that of the King's Authority; for that the King is no leſs concerned therein, than the people; and the rather, becauſe it was now grown to that pitch, that it is become the Darling of Kings; and continually henceforth courted by them; either to gain them from the Papal Juriſdiction, to be more engaged to the Crown, or by their means to gain the Papal Juriſdiction, to be more favourable and complying with the Prerogative Royal. The former times were tumultuous, and the Pope is gained to joyn with the Crown to keep the people under, though by that means, what the Crown ſaved to it ſelf from the people, it loſt to *Rome*: Henceforth the courſe of Affairs grew more civil, or (if you will) graced with a bluſh of Religion: and it was the policy of theſe times, where-

whereof we now Treat, to carry a benign Aſpect to the Pope, ſo far only as to ſtave him off from being an enemy, whilſt Kings drove on a new deſign to ingratiate and engage the Church-men of their own Nation, unto it's own Crown. This they did by diſtinguiſhing the Office, or Dignity of Epiſcopacy, into the Miniſterial and Honourable Parts; the later they called Prelacy, and was ſuperadded for encouragement of the former, and to make their work more acceptable to men for their Hoſpitalities ſake; for the maintenance whereof, they had large Endowments and Advancements: And then they reduced them to a right underſtanding of their Original, which they ſay, is neither *Jus Divinum*, nor *Romanum*, but that their Lordſhips, Power, and great poſſeſſions, were given them by the Kings, and others of this Realm. And that by vertue thereof, the Patronage and cuſtody of the Poſſeſſions in the vacancy ought to belong to the Kings, and other the Founders; and that unto them the right of Election into ſuch advancements do belong, and not unto the Pope, nor could he gain other Title unto ſuch power, but by uſurpation, and encroachment upon the right of others. But theſe Great Men were not to be won by Syllogiſms; Ordinarily they are begotten between Ambition and Covetouſneſs, nouriſhed by Riches, and Honour; and like the Needle in the Compaſs, turn ever after that way. *Edward* the Third, therefore labours to win theſe men, heaped Honour and Privileges upon them, that they might ſee the gleanings of the Crown of *England*, to be better than the vintage of the Tripple Crown. Doubtleſs, he was a Prince that knew how to ſet a full value upon Church-men, eſpecially ſuch as were devout; and it may be, did ſomewhat outreach in that courſe: For though he ſaw God in outward events, more than any of his Predeceſſors; and diſclaiming all humane merits, reflected much upon God's mercy, even in ſmaller bleſſings: yet we find his Letters reflect very much upon the Prayers of his Clergy, and loved to have their Perſons nigh unto him, put them into places of greateſt Truſt, for Honour, and Power, in Judicature; that not altogether without cauſe, he had thereby

25 E. 3. Stat. 6

pur-

purchaſed unto his Kingdom, the name and repute of being a Kingdom of Prieſts. But all this is but Perſonal, and may give ſome liking to the preſent Incumbents, but not to the Expectants; and therefore the Royal Favour extended ſo far in theſe times, as to bring on the Parliament to give countenance to the Courts and Judiciary power of the Ordinaries, by the poſitive Law of the Kingdom, although formerly the Canons had already long ſince made way thereto by practice: I ſhall hereof note theſe few particulars enſuing.

Ordinaries ſhall not be queſtioned in the King's Court for Commutation, Teſtamentary Matters, or Matrimonial Cauſes, nor other things touching juriſdiction of Holy Church. 15 E. 3. cap. 6.

Things formerly bred by the Canon, nouriſhed by continual practice, allowed by Ordinance of Parliament, or Grant from Kings in Parliament, are now confirmed by ſolemn concurrence of the whole repreſentative Body of the Kingdom, to have and to hold with Warranty. And yet the ſence is not ſo general as the words, nor doth it ſeem much other, than a Confection made for the Arch-Biſhops appetite, to cure a diſtemper between him and the King: for the Civil Judge loſt nothing hereby, nor would the Crown, as may appear by a Law of equal Authority with the former: for though an Executor or Adminiſtrator may cheat, yet it tells us that Ordinaries only can oppreſs, and extort from dead Men; and therefore in ſuch caſes doth provide remedy by enquiry, and Indictment before the King's Juſtices.

22 *Aſſ. pl.* 70
45 E. 3. 24. *Fitz. conſultat.* 5.
31 E. 3. *cap.* 4.
25 E. 3. *Stat.* 3 *cap.* 9.

They ſhall have Cogniſance of Uſury, during the Delinquent's Life, and the King after the Delinquent's death. 15 E. 3. c. 5.

The difference ariſeth from the different end; the firſt being to reform the Perſon by Church-cenſures, and to urge him

Miror. Juſt. cap. 5. Sect. 1. 51 H. 3. pout. cleri. c. Artic. 16 50 E. 3. n. 158 6 Rich. 2. n. 57. 14 Rich. 2. n. 24. Inſtit. 3. cap. 70. 6 E. 3. coram Rege, Rot. 130. Porff.

him to reſtitution; the latter is for the King's Fine or Forfeiture: For as touching the Uſurer's eſtate, the offence was in the nature of Felony, forfeiting both Lands and Goods to the King, after the Delinquent's death: And it ſeemeth the manner was to Indict the Delinquent during his life, and that ſtuck to him as a deadly Arrow in his ſide, till he died. Nor did it lie in the power of the Ordinary, by Eccleſiaſtical cenſure, ſo to reform the Offender, as to clear him to the King, unleſs the party offending, made his peace with the King by Compoſition: and thus the Law continued, for ought appeareth to me, till the time of *Henry* the Eighth.

25 E. 3. c. 8. pro clero. 18 E. 3. c 2. 15 E. 3. Stat. 2. 9 Rich. 2. c 4

They ſhall have Cogniſance of avoidance of Benefices of Right: They ſhall certifie Bigamy; and Baſtardy had beyond the Sea; and whether a Prior be perpetual, or Dative.

The firſt of theſe concerning avoidance of Churches, it ſeemeth was ſomewhat doubtful in point of practice, for that the Civil Judge uſed to determine all manner of avoidances, as well in Fact, as of Right; but by this Statute they are reſtrained only unto avoidances in Fact, ſo as after this Statute it is holden, that avoidances by death ſhall be tryed by the Countrey; but if the avoidance be by Deprivation, Reſignation, Creation, or otherwiſe, it ſhall be tryed by the Ordinary: becauſe by common intendment he is more connuſant of the thing, than Countrey people. But as touching the point of *Bigamy*, the matter is more doubtful, in regard that commonly the marriage of a ſecond Wife, or Widow, is a matter in Fact, done in the face of the people; and of which they take notice, eſpecially where the life of man is concerned, which rather requireth the Judgement of his Peers, than where the outward maintenance only is engaged. Nevertheleſs, becauſe the main point is, whether the party be a Clerk or not, and the ſame anciently reſted upon the Certificate of the Ordinary: It's by this Law again allowed to him to try and certifie this point of *Bigamy* alſo, although

Bro. quar. imp. 85.

although the Statute of *Bigamists*, might seem to Entitle the civil Magistrate thereto, as the Law was holden to be before this Statute was made. In the next place, although it cannot be denyed, but the Trial of Bastardy beyond the Sea, might as well lie in the Cognisance of the Lay Magistrate, as in that of the Ecclesiastical; yet seeing the Clergy had already attained the Cognisance of the thing, the place proved but a matter of Circumstance, especially they having the advantage of the Civil Magistrate in this, That in regard the Ecclesiastical persons beyond the Sea, had also obtained the Cognisance of that matter amongst themselves, their Testimony or Certificate would come with more credit to the Clergy in this Kingdom, than to the Magistrate; whose Cognisance in such Cases they did disallow. 8 *E.* 3. *cap* 8.

Lastly, concerning Priories, whereas some were presentative, and filled by Induction from the Ordinary; and others were Donative, having their Priors meerly at the will of the Abbot, to be placed and displaced as he thought most expedient: if then the point in Issue depends upon this knot, this Law referreth the Trial unto the Ordinary, who by common presumption best knows whether any Institution and Induction had passed his Registry, and Seal, or not. And thus, though a kind of Judicial power seemeth to be carried along herewith, yet is all in a ministerial and subservient way, unto the Civil Magistrate; and nevertheless, with such credit and Authority, that the main hinge of the Judicatory, in such cases, depends upon the dash of their Pen.

No Bishop, nor Arch-Bishop, shall be impeached before the Civil Magistrate, without the King's expres Warrant. 18 *E.* 3. *c.* 1.

The former particulars, concerned matter of Authority; this and others ensuing, concern matter of immunity, which, or most of which were formerly for a long time within the Fancy of the Canon, but never came to the height of Parliamentary approbation or Authority till now, that it comes in

as a peace-offering to pacifie the quarrel between the Arch-Bishop *Stratford*, and the King: For he being engaged in the French Wars, so resolved to continue; and therefore to maintain distempers at home, he held neither Honourable, nor safe.

Their Temporalties shall not be wasted, during the Vacancy: Nor shall they be seised, but by Judgement of the Court.

14 E. 3. c. 2.

The first of these was an ancient Law, grounded upon great reason; although dulled by time, and by covetousness of the needy Patrons, next to laid aside, if not quite put out of countenance: So as a new Law must be made to revive it, and to abolish that corrupt custom, or practice of depredating those possessions given to a holy use in common supposal, contrary to the trust by them undertaken, and the use still continuing. But the second Branch is in nature of a Law of Restraint, set upon the Common Law: for the persons of these Spiritualized men, were of so aery a constitution, as they could not be holden by hands made out of the Clay, such as the rude Laity were; and therefore the Civil Magistrate, upon all occasions used to lay hold upon that, whereof there was some feeling, which were called Temporalties, and thereby drew them to appearance at the Lay-Courts; for however Spiritual the Clergy were, they would not easily part with their Lay Fees. But now by this Law, the times are so attenuated, that the very Temporalties are made so Spiritual, as not to be meddled with by the Lay Magistrate, unless upon judgement first obtained against them. And suitably thereunto within twelve years following, another Law was made more punctual, that their Temporalties should not be seised upon for contempts, but that their Persons should be seised; yet within twenty years after that, this Law begins to be out of Countenance, and the Opinions of the Judges began to grow bold upon the ancient rule, that their Temporalties were Temporal, though their persons were Spiritual; and that it was more dangerous to im-

25 E. 3. c. 6.

prison

priſon the perſon of a Clergy-man, than to attach his poſſeſſions: And therefore they held, that if the Ordinary remove not the Incumbent when the King's Writ commands him ſo to do, his Temporalties ſhould be ſeiſed. And if the Ordinary ſhould certifie one to be a Clerk which is none, the like courſe is to be taken. 44 *E.* 3. *fol.* 35, 36. *Per Thorpe.* 7 *H.* 4. *fol* 41. *Per Gaſcoign.*

They ſhall depute the next and moſt lawful Friends of the Inteſtate to adminiſter his goods. 31 *E.* 3. *c.* 11.

The Statute at *Weſtminſter* the ſecond, having given formerly a kind of allowance, that the Ordinary ſhould be Adminiſtrator to the Inteſtate, ſo far as to anſwer the Inteſtate's debts, lent him thereby an opportunity to poſſeſs himſelf of the whole, to all intents and purpoſes; which being obſerved by the Parliament, by this Law they made way for Adminiſtration, to fall through the hands of the Ordinary, into the Lap of Adminiſtrators, made by the Authority of the Parliament; but of the Ordinaries nomination, according to the Authority hereby to him given. Theſe Adminiſtrators thus made, had a greater power than ever the Ordinary had, or could give. For though the Ordinary by the Statute at *Weſtminſter*, was bound to pay the Debts of the Teſtator, yet could he never bring Action as the Adminiſtrator to all intents by this Law is enabled to do: And though it be true, that the Adminiſtrator is by this Law ordered to account to the Ordinary, yet doth not that entitle the Ordinary to any intereſt in the perſonal Eſtate; but only gives him a bare Authority to take the account, without any compulſory power by Eccleſiaſtical cenſures, to enforce him thereto. *Weſt.* 2. *c.* 19.

Secondly, it is ſuch an account, as is no Evidence in any Court of Record: And Laſtly, if upon the foot of the account, any arrere remained, or ſurpluſage of Eſtate; the Ordinary could neither recover, nor order the ſame; becauſe by the Law anciently, the next friends had the ſole intereſt therein: and being by this Statute made Adminiſtrators,

the whole power of ordering the Estate is vested in them.

To conclude, this Statute was made in favour, and for the ease of the Ordinaries, if they would please so to take it, for they could get no benefit by executing the Administration in their own persons, if they intended to Administer according to the Law.

5. E. 3. cap. 5. *The Persons of the Clergy are privileged from Arrests, during the Holy Actions of their Officiating.*

This was plotted since *Anselm*'s time, he and his Successors endeavoured by Constitution, and Canon, continually to mind the Civil Magistrate thereof, but could never nurse it up to the Degree of a Law, till now; they gained the advantages of the times, growing into a more tender apprehension of Devotion, than formerly. The penalty of transgressing this Law
1 Rich. 2. c. 15. is left in general, and therefore did the less scare, but within three years after, it was confirmed with a certain penalty of Fine, and Imprisonment, as to the King's suit, and damages to the party offended: and the Privilege was enlarged, for, and during their continuance in the Consecrated ground, in order to such Services, and not upon Fraud, or Collusion to avoid Arrests: But by neither of these Laws was the Arrest (although contrary to them) made void, as touching the Process.

14 E. 3. Stat. 3 cap. 1. *The goods of the Clergy, are discharged from Purveyance, and their Houses from Quarter.*

The latter of these was an Encroachment upon the greater Clergy-men: For under the Title of Hospitality, which the Prelates were obliged to by their great Possessions, and Revenues, conferred upon them to that end, Kings used to quarter Messengers, to and from *Scotland*; The King's Horses, Dogs, and Hawks, *&c.* But the point of Purveyance, was an ancient Prerogative belonging to Kings, and by no Custom were the goods of any man discharged therefrom, till

till it was by Act of grace first confirmed by *Edward* the First, and afterwards by grant of *Edward* the Second, yet by reason of the rudeness of the times, did not those Acts prevail to that settlement that was promised; till now *Edward* the Third renewed the Law: nevertheless could not this Law of *Edward* the Third perfect that work, because it was but a bare command till *Richard* the Second made a remedial Law, giving thereby the Clergy that were wronged a right of Action of Trespass against the Purveyors, and to recover treble damages, whereas formerly they were liable only to a fine to the King, which many times was as soon pardoned as asked.

West. 1. *cap.* 1. *Stat. de prisis.*

1 *Rich.* 2 *c.* 3.

These condescensions might have wedded the English Clergy to the English Crown, but that it was coy and expected further gratuities: besides they beheld their old Step-dame *Rome*, now in its full Splendor and Power, and deeply interested in the sway of affairs in this Kingdom, and above all the rest, the nigh affinity between the Prelate and the Pope was such, that they sucked one milk, breathed one Air, and like the Philosophers twins, lived in each other: The latter of these was not discerned by those dim sighted times, and therefore they could do nothing towards the dissolution of that knot, but left it to future times, who found no other way than to cut it asunder: But *Edward* the Third and his Successor espyed the first, felt the inconvenience thereof, and applyed themselves to such remedy as they found most ready at hand. All things that are subject to time are also subject to change, which comes commonly slower upon Governments that are less Ecclesiastical, for Churches continue longer in a growing condition than in their complete estate, like a Christian that seldom endures long after his full ripeness. Thus *England*, it's hitherto above a thousand years since the Gospel came to the Saxons, and well nigh a thousand years since the Pope set his foot amongst us; ever approaching nigher the Throne, and ascending thereunto; but finding it full of a King that would not remove, he sits down in his Lap; a heavy burthen questionless,

leſs he was, conſidering his claim of Juriſdiction, his proviſions, penſions, exemptions, impoſitions, and ſuch like oppreſſions; and therefore it's no wonder if the King feeling the incumbrance, gives a lift at the Pope's power, by ſtoping the currant of Money from *England*, *Rome*-wards: To this end, the Statute made at *Carliſle* is revived, whereby the Clergy are inhibited from conveying Treaſure beyond the Seas; but the Pope knew how to ride, and will not ſo eaſily forego his ſaddle. The *Roman* Eagle had made many a fair flight in *England*, and had not yet fully gorged himſelf; he grants ten thouſand Marks yearly out of Taxes laid upon the Church-livings in *England*, unto two Cardinals, neither of which did, nor, by the Canon, could live in *England*; the Treaſurerſhip of *York* alſo to another Cardinal, after that the King had conferred the ſame elſewhere. He proceeds alſo further to invade the undoubted rights of the Crown, by making an election of the B. of *Norwich*, and cauſing him to be inveſted *Rege renitente*: the King ſpent eight years in the recovery of his right, and was deluded in the concluſion; he now ſees it bootleſs to ſtand always upon his defence, and receive affronts; he reſolves therefore to enter the liſts, and maketh ſeiſure of the Deanery of *York*, which formerly by uſurpation, the Pope had conferred upon a Cardinal; and of all Church-livings given by the Pope to aliens. Then a Law is made more ſharp than thoſe in the eighteenth year, wherein Proviſors of Abbies and Priories are made liable to a *Præmuniri*, and Proviſors of other Eccleſiaſtical Livings and Dignities, whereby the preſentation of the rightful Patron is diſturbed, to be fined and impriſoned until the fine and damages to the party wronged be paid. And all ſuch as draw men to plead out of *England*, in caſes that belong to the cogniſance of the King's Court, and all obtainers of proviſions in the Court at *Rome*, theſe were alſo ſubject to a *Præmuniri*. For whilſt theſe things were thus in action, the Pope beſtirred himſelf notably with Citations, Excommunications, Interdictions, and ſuch other birds of prey, not only againſt mean men, but Judges, Biſhops,

4 *E.3. c.6.*
5 *E.3. c.3.*
Rot. Parl. 10 *E.3. Arch. Reg.*
18 *E.3. tit* 38.
Fox. 388.
25 *E.3. Stat.* 5. *cap.* 22.
Fox. Sect. 1.
27 *E.3. c.1.*

Bishops, and the King's Council; as amongst others, the case of the Bishop of *Ely*, at the solicitation of some of inferiour regard, as I remember, a Clerk or some such thing: yet as these Bull-drivers or summoners to the Romish Court, were no late upstarts, so were not these times the first that took them to task: for before the Statutes of *Præmunire*, we find provision was made against Provisors, and that some Statute did precede those in Print, which punished a disturber of the King's Incumbent, by a Bull from *Rome*, with perpetual imprisonment, or at the King's will; besides the party wronged was allowed an Action for his damages, *Qui tam pro Domino Rege quam pro seipso sequitur*; and before that time also, bringers of Bulls from *Rome* were imprisoned, although in all these cases aforesaid, the liberty of the Persons, both of Lords and Prelates, was saved: And thus all the while King *Edward* the Third kept the field, he gave the Pope cuff for cuff, but retiring himself to take his ease, he waxing wanton, waxed weak, and more slowly pursued the vindication of his own right, and his Subjects liberty. The Laws are laid aside, and *Rome* had further day given to plead, and in the mean time execution is staid: the double mind is double dyed, and advantage is soon espyed, above sixty Church-livings more are suddenly catched and given to the favorites at *Rome*; the Parliament rings herewith, yet the King delays the remedy, and in this Edy of affairs, *Edward* the Third dies, and *Richard* the Second takes up the place, who had wit enough to observe what concerned his own interest, and courage enough to pursue it: But neither wit nor courage to over-rule his lusts, which in the conclusion overruled all rule, and brought himself to destruction. He found the people at his entrance into the Throne irritated with the Pope's oppressions, and vexed at his Grandfathers desidiousness. His Spirit is also stirred within him, and himself thereby pressed to tread in his Grandfather's former ways, and to outrun him in his latter: he made the penalty of *Præmunire* to extend to all Farmers, or others, in nature of Bailiffs, that held any Church-maintenance to the use of any Alien, and

Antiq. Brit. Eccles. 247.

21 *E.* 3. *fo.* 40.

38 *E.* 3. *c.* 1.

Rot. Parl 51. *E.* 3. *tit.* 35.

3 *Rich.* 2. *c.* 3.

7 *Rich.* 2. *cap.* 13. 12 *Rich.* 2. *cap.* 15. and unto all Aliens that are Purchasors of such Provisions to any use: and unto all Lieges, that shall in like manner purchase such Provisions.

But as touching such as shall accept such provisions, he ordained Banishment for their Persons, and Forfeiture of their Estate: Notwithstanding all this, the Roman Horseleech would not so give over. The King grew into displeasure with his Subjects, and they with him, and with one another; they see the Pope still on Horse-back, and fear that the English Clergy, their own Countrey-men, if not Friends, and Abettors, yet are but faint, and feigned Enemies to the Pope's Cause. Nor was it without Cause that their fear was such, for as the Pope had two hands to receive, so they had two hearts, making show of forming blows at the Pope, but then always at a distance, or when without the Pope's Guard; and thus the Laws begin to stammer and cannot speak so plain English as they were wont. The people hereat offended, resolve to put the Clergy into the Van, and to try their mettle to the full.

13 *Rich.* 2. *Stat. cap.* 21.

At the last Parliament that *Richard* the Second did hold, both the Lords Temporal, and Spiritual, are opposed one by one. The Lords Temporal (like themselves) resolve and enter their Resolutions, to defend the right of the Crown in the Cases of Provisors; although even amongst these great men all were not equally resolute; for Sir *William Brian* had purchased the Pope's Excommunication against some that had committed Burglary, and he was committed to the Tower for his labour: But the Prelates answer was ambiguous, and with modifications, which was all one to cry (as men use to say) Craven: yet was the Statute made peremptory, according to what was formerly Enacted. And though the Prelates cautionary way of proceeding, might be a principal reason why the Pope's power held so long in *England*, in an usurping way: yet Kings also much conduced thereto, by seeking too much their personal ease above the Honour of their Place, and the Pope's blessings, and opinion of his Favour, more than their own good, or the

16 *Rich.* 2. *c.* 5.

Antiq. Brit.

the peoples liberty: for there was no other balm for a distracted mind, than that which dropped from the Pope's lips. In like manner, *Richard* the Second, being already, at least in purpose, estranged from his people, sought to get Friends at *Rome*, to hold by the Spiritual Sword, what he was in danger to lose, by laying aside the Sword of Justice, which is the surest Tenure for Kings to hold by: And though the Popedom was now under a Schism, between two Popes, *Clement* and *Urban*; yet he was so far won for *Urban*, that he not only engaged himself, and the Parliament, to determine his Election, and uphold the same; but also, *Ex abundante*, did by Implication allow to him an Indefinite power, to grant provisions, and so at once he lost the Die, and gained a Stake, that like a bubble looked fair, but soon vanished away. 2 *Rich.* 2. c. 7.

Nevertheless, these two Comrades, whilst they were together, resolved to make the most of each other that they could; and therefore though the Popedom liked not the King, yet the Pope had his love so far, as he could deny himself; for he had already denyed his Kingdom: And (if the Articles exhibited against the King by *Henry* the Fourth, be true) the Pope had his Faith also: For (that he might be rid of his reputed Enemy, Arch-Bishop *Arundel*) he trusted the Pope with that Complement of making *Walden* Arch-Bishop of *Canterbury* in *Arundel*'s stead; which the Pope took so kindly, as he made it a precedent for provisors for the future. Nor did the King stick in this one Singular; but made it his Custom in passing of Laws, (especially, such as the King was most devoted unto) to put more Confidence in the Pope's *Amen*, than in all the prayers of his Commons, with his own *Soit fait*, to boot. The sum then will be, that the prize was now well begun, concerning the Pope's power in *England*. *Edward* the Third, made a fair blow, and drew blood; *Richard* the Second, seconded him, but both retired; the former left the Pope to lick himself whole, the latter gave him a salve, and yet it proved a Gangrene in the conclusion. *Antiq. Brit.* 272.

The second means used to bring down the power of the Pope in this Nation, was to abate the power or height of the English Clergy: for though the times were not so clear as to espy the Root of a Pope in Prelacy, yet experience had taught them, that they were so nigh engaged, that they would not part. And therefore, first, they let these men know, that Prelacy was no Essential Member to the Government of the Kingdom; but as there was a Government established before that rank was known, so there may be the like when it is gone. For *Edward* the Third, being troubled with a quarrel between the two Arch-Bishops of *Canterbury* and *York*, concerning Superiority, in bearing the Cross; and the important affairs of *Scotland*, so urging, summoned a Parliament at *York*, which was fain to be delayed and adjourned for want of appearance, and more effectual Summons issued forth; but at the day of Adjournment, none of the Clergy of the Province of *Canterbury* would be there; and upon this occasion the Parliament was not only interrupted in their proceedings, but an ill precedent was made, for men to be bold with the King's Summons, in such Cases as liked not them; and thereupon a Statute was made to enforce Obedience upon Citizens, and Burgesses, and such Ecclesiasticks as held, *per Baroniam*. Nevertheless, when the matters concerning provisors began to come upon the Stage, which was within two years after that Law was made, the Clergy found that matter too warm for them, and either did not obey the Summons, or come to the Parliament; or if they came, kept aloof; or if not so, would not Vote; or if that, yet order their Tongues, so as nothing was certainly to be gathered, but their doubtful or rather double mind. These Prelates thus discovered, the Parliament depended no more upon them, further than they saw meet: At six or seven Parliaments, determined matters without their Advice; and such as crossed the principles of these men: and therefore in a rational way might require their Sence above all the rest, had they not been prepossessed with prejudice, and parties in the matter. Nor did

25 *E. 3. Stat. 3 cap. 6.*

did *Edward* the Third, ever after hold their presence at so high Repute at such meetings; and therefore summoned them, or so many of them, as he thought meet for the Occasion; sometimes more, sometimes fewer, and at a Parliament in his forty and seventh year, he summoned only four Bishops, and five Abbots. And thus the matter in Fact passed in these times, albeit the Clergy still made their claim of Vote; and desired the same to be entred upon Record.

And thus the Parliament of *England* tells all the World, that they hold themselves complete without the Clergy, and to all intents and purposes, sufficient to conclude matters concerning the Church, without their Concurrence. Thus began the Mewing time of Prelacy, and the principal Feather of their wings to fall away, having now flourished in *England* nigh eight hundred years: and had future Ages pursued the flight as it was begun, these Lordings might have beaten the Air, without making any speedy way, or great work, saving the noise. *Antiq. Brit. 23. Co.*

A third step yet was made further, in order to the reducing of the power of the Popedom in *England*, but which stumbled most immediately upon the greatness of the Prelates. For it was the condition of the Spiritual powers, besides their height of Calling to be set in high places, so as their Title was from Heaven; but their possessions, were from men, whereby they gained Lordship, Authority, and power, by way of Appendix to their Spiritual Dignities: This Addition however it might please them, yet it for a long time e're now had been occasion of such murmur and grudge in the Commons against the Clergy, as though it advanced the Clergy for the present, yet it treasured up a back reconing for these men, and made them liable to the displeasure of the Laity, by seisure of their great places: when as otherwise their Ecclesiastical Dignities had been beyond their reach. And of this, these times begin now to speak louder than ever, not only by complaints made in Parliament by the people, but also by the Lords and Commons in Parliament, *25 E. 3. Rot. Parl. 22. n. 15.*

ment, to the King, that the Kingdom had [illegible] now long, and too long time been governed by the Clergy, to the diſheriſon of the Crown; and therefore prayed, that the principal Offices of the Kingdom, might henceforth be executed by the Laity: and thus the ſtir aroſe between the Lords Temporal and Spiritual, each prevailing or loſing ground, as they had occaſion to lay the way open for them. The Duke of *Lancaſter* being ſtill upon the upper ground, that as little regarded the Pope's Curſe, as the Clergy loved him.

But the worſt, or rather the beſt, is yet behind; Outward power, and Honourable places, are but under-ſetters, or props to this Gourd of Prelacy, that might prove no leſs prejudicial by creeping upon the ground, than by perking upward: For ſo long as Errour abideth in the Commons, Truth can have little ſecurity amongſt Princes; although it cannot be denyed, but it's a good ſign of a clear morning, when the Sun-riſing, gloryeth upon the top of the Mountains. God gives Commiſſion therefore to a Worm, to ſmite this Gourd in the Root, and ſo at once both Prelate, and Pope, do wither by undermining. This was *Wickliff*, that had the double Honour of Learning in Humane and Divine Myſteries; the latter of which had for many years paſſed obſcurely, as it were in a twilight amongſt the meaner ſort, who had no Endowments to hold it forth amongſt the throng of Learned or great Men of the World.

And though the news thereof did ſound much of Holineſs and Devotion, Theams unmeet to be propounded to an Age ſcarce Civilized: Yet becauſe divers of them were more immediately reflecting upon the policy of the Church, wherein all the greater ſort of the Church-men were much concerned, but the Pope above all the reſt; the acceſs of all the matter, was made thereby more eaſie to the Conſideration of the great Lords and Princes in the Kingdom, who out of principles of State, were more deeply engaged againſt the Pope, than others of their Rank formerly had been: Duke *John* of *Gant* led the way in this Act, and had a party

party amongst the Nobility, that had never read the Canon-Law.

These held forth *Wickliff* and his Learning to the World, and *Edward* the Third himself favoured it well enough, but in his old Age desiring his ease, was contented to look on, whilst his Lords Temporal and Spiritual played their prize; yet giving his *plaudite* rather to his Son, than his Spiritual Fathers, as if led by principles of Nature, rather than Religion: This was the blossoming part of the *Wickliffists*, but the principal strength was from beneath, where the roots spread and fattned exceedingly, especially in the South, and Eastern parts of this Kingdom. *To tell of the Usurpations of the Clergy, the Idolatry of their costly Worship, the Vanity of their Curses, &c.* was exceeding welcome news to an oppressed multitude, especially where these things were rightly understood. The Issue soon manifested it self to the World, no Parliament passed without reflexions at Prelates, *Rome*, or some such thing; and not only the persons and practices of these men, but even their Laws and Canons, were begun to be had in contempt; and their mis-lives slighted. And thus these men pretending patronage, both from Right drawn from Heaven, and derived from men, fail in their Evidence, unless the people do still believe more than they are able to understand. 51 E. 3. n. 46, 47.

No marvel if *Rome* be now rowzed, and that sort of men that formerly were Wolves in Sheeps-cloathing, become now red and fiery Dragons, taking up a new course of Establishing their power by persecution. This was a way of power indeed, but it's a touchy thing to have to do with fire, lest it gets too high. It is therefore holden a point of discretion by the Prelates, not to meddle with the Lords or the Common people; the former were too great, the latter too many; the one sort would not hear, the other would not understand: The Teachers therefore being the Velites, at them they give fire. *Wickliff* their Leader comes on bravely; and notwithstanding they all made at him, he routs them, and in despite of them all, comes off fairly, and

Antiq. Brit. and dies in his bed by the course of Nature: Then an Ordinance is levelled at the rest of the Teachers: This was made of an old Canon, the nature whereof was to this purpose.

5 *Rich.* 2. *Stat.* 2. *c.* 5. *That upon complaint of the Bishop, the King's Writ shall be granted, to apprehend Preachers of Heresies, Errours, and matters of Slander, tending to Discord, and Dissension, between the States of this Realm, with their Factors, and Abettors; and to imprison them, till they be acquitted according to the Law of the Church.*

This Law (for such it yet appears) gives occasion to consider of these particulars, *Viz. The Crime, the Delinquents, the manner of Inquisition, and the Penalty.* For the first, (not to trouble my way with Debate, about the right of liberty of preaching) the matter in Fact was, that Men did publickly Preach without Authority, matters of *Theology*, tending (as it's said) to sow discord and dissension; so as they are under consideration and censure of the Church men and Canon-Law, in one regard, and of the Laws of the Kingdom and Civil Magistrate, as disturbers of the peace, on the other side: and thus the Subjects liberty is cast into a misterious, cloudy, and doubtful posture, by matters of Opinion.

Secondly, the persons Delinquent, are also left to an indefinite Construction: For they are not only preachers in publick, which might be an Order of Men within the Church Cognisance, as things then stood; in regard it was permitted to the Church to Authorize Men to preach, but also their Factors, and Abettors; words that might comprehend any other person whatsoever, according to the passion or discretion of the Church-men.

Thirdly, the manner of this Inquisition must be according to the Canon, and then the people are at the Church-mens mercy, to return Complaints against whom they please, upon such Grounds as they shall think meet. The persons that must make this Inquisition by this Law, are the Ordinaries, or any one

one of them, and for ought appears the same might be done, *by Pope, Council, general, National, Provincial, Diocesan, or their Delegates, according to the Canon:* Although the last precedent that I met with, was executed by a Grand Council of Lords and Prelates, in the time of *Henry* the Second. But now the Clergy finding the Laity began to swell against the Canon; they thought it high time to get the Civil Sword to joyn in the work, to be as their Hands to apprehend, and Gaolers to hold in Custody, such as they should complain of, without any other Legal Conviction; although hereby, they not only disclaimed the exercising of their own power of Imprisoning, which they by the Canon formerly claimed to have in such Cases; but also acknowledged to receive their power Judicatory in such Cases from the Parliament.

Thus was this Ordinance levelled, as I said, but the shot fell short: For this Law attained no further perfection, than a meer shape, and was complained of by the Parliament, within few months after its first noise, that it was made and published without the Commons consent, or knowledge; and that the Nature thereof was directly contrary to the Liberties of the people; and therefore they prayed that it might be repealed, and the same was done accordingly; although the times have been such as would not suffer the same to come into the publick Book of Statutes in Print. But whether Statute, or no Statute, they tell the King plainly, that they will not further be bound or justified by the Prelates, than they, or their Ancestors were anciently used to be; and besides that, they thought somewhat more, which they laid up against future times; nor was it long e're they discovered it. For a Subsidy being offered to the King by the Laity, under a *Proviso*, that the Clergy would grant a Tenth; the Clergy took this Articulating of the Commons in snuff, and protested that the Laity should not charge them. The Commons hereat begin to bid battel to the Temporalties of the Clergy, and had not the King been a fast Friend in good earnest unto the Clergy, the Laity had won the Field. Thus were these times like the motion

5 Rich. 2. Artic. 52.

tion of the Ballance unto the Church-men, ſometimes up, ſometimes down; getting ſomewhat which they formerly had not, with leſs aſſurance in what they had.

CHAP. VII.

Concerning Trade.

KINGS hitherto had lived upon the main ſtock, improving the ſame to the utmoſt peny: few of them laid up for the future, much leſs endeavoured to advance the principal for their Succeſſors.

There had now been ten Kings of this Nation ſince the Conqueſt, all of them ſpending what they had, or could get from the people, in the maintenance of their Patrimony, or their own Luſts: if any over-plus was either gained by, or ſaved from the game, their Executors might be the better for it, their Heirs were not: But *Edward* the Third had a new game to play, he muſt gain his right by his Sword, or he muſt loſe it; his Spirit was too big to ſit ſtill and bear blows: and yet pre-adviſing himſelf about the poverty of the people, and that their patience would be ſpent ſoon after their ſupplies, if they continually ſaw much going out, and nothing coming in; he had a rule upon his private expences, a good gloſs upon the publick, and a platform for the augmenting of the Treaſure of the Kingdom, as well for the benefit of the people, as of the Crown. In order to the firſt, it is conſiderable, that the Royal Family was great and numerous above all his Predeceſſors: that beſides the King and Queen who were of a gallant and accompliſht deportment, they had a Son, a Prince of as great renown as ever Prince had, & he alſo a Family ſuitable to his generoſity: that they had other children, every one like their Father, both for War and Peace; and that for the maintenance of all theſe, the expences muſt be in reaſon larger than formerly they were

were wont to be; nevertheleſs, becauſe purveyance for the King had already ſwelled ſo big, that all other oppreſſions ſeemed to be ſwallowed up into that one, the King to moderate the rigour thereof made nigh twenty Statutes, firſt excluding all ſervants at wages; and Horſes and Dogs which were put to board with the Sheriffs: then reducing the purveyance only to the Families of himſelf, his Wife, and Children, then to the Families of himſelf, the Queen, and Prince: and in the levy hereof, ſome mens eſtates were abſolutely privileged, and ſome kind of goods, as ſheep before ſhearing, and Trees about the dwelling houſe. Nor is the ſettling of the manner leſs conſiderable. It muſt be levyed by Authority in writing under the ſeal: and it muſt not be taken againſt the owners will, or upon malice; nor muſt be ſpared for reward; the price muſt be the ſame with the true Market-price; the meaſure according to the common meaſure ſtricked, and the payment muſt be immediately, if the price be under twenty Shillings, if above, it muſt be made in a quarter of a year, and no man muſt charge more carriage than is neceſſary, and thus was this wild Ivy of purveyance that like ſome kinds of plants ſpreads over all, by rooting up and cutting down, brought into ſome kind of faſhion, that if it did no good it might do the leſs hurt unto the people.

4 *E.* 3. *c.* 4. 14 *E.* 3 *c.* 19. 34 *E.* 3 *cap.* 2. 36 *E.* 3. *c.* 2. 5, 6. 14 *E.* 3. *c.* 1. 24 *E.* 3. *c.* 6. & 15. 4 *E.* 3. *c.* 4. 14 *E.* 3. *c.* 19. 36 *E* 3 *c.* 3. 4 *E.* 3. *cap.* 3. 28 *E.* 3. *c.* 12 36 *E.* 3. *cap.* 2.

Secondly, although it be true that *Edward* the Third was a King of many Taxes above all his Predeceſſors, yet cannot this be imputed as a blot to the honour of the Law, or liberty of the people; for the King was not ſo unwiſe, as either to deſire it without evident cauſe, or to ſpend it in ſecret or upon his own private intereſts, nor ſo weak and irreſolved as not to employ himſelf and his Souldiers to the utmoſt to bring to paſs his pretentions, nor ſo unhappy as to fail of the deſirable iſſue of what he took in hand: ſo as though the people parted with much money, yet the Kingdom gained much honour and renown, and becoming a terrour to their Neighbours, enjoyed what they had in fuller ſecurity, and ſo were no looſers by the bargain in the concluſion. Secondly, although they parted with much, yet nothing to Prerogative

but in a Parliamentary way; and so it was not taken but given. Thirdly, though the Taxes were frequent, yet but light; for frequent light Taxes steal insensibly without regret, and as they grow into matters of course, so they meet with acceptance of course. Two things made them of light account. First, they were not Taxes altogether of Money in kind, but of goods, such as the sheaf and fleece, and such like things, whereof the ownership is visible, whereas many are supposed to have Money which have it not, but must borrow it or sell their goods at an under rate many times to accomplish it for the payment of their Taxes. Secondly, these Taxes were assessed by the Neighbourhood, and not upon extremity of Survey, by Commissioners, who many times are subject to miscarry upon grounds of private Interest, or for want of due information, or by making more hast than good speed.

5 E. 3. cap 6.

These Taxes likewise were reduced to the ancient rule, according to the Statute of *Westminster* the first. And thus did this King shew himself truly Royal in demanding his Taxes upon evident grounds of State, levying them with a tender hand, and employing them to their right end.

25 E. 3. c. 11.

Thirdly, that which digested all, and bred good blood, was in that the people had *quid pro quo*, by the advance of Trade, wherein the King shewed himself the Cape Merchant of the World. Certainly, mens parts in these times were of vast reach, that could manage such Wars, settle such a Government, and lay such a foundation of a Treasury by Trade, a thing necessary to this Island, next unto its own being, as may appear, not only in regard of the riches of this Nation, but in regard of the strength thereof, and in regard of the maintenance of the Crown; the two latter of which being no other than a natural effluence of the former, it will be sufficient to touch the same in order to the thing in hand. Now as touching that, it's evident that the riches of any Nation are supported by the Conjuncture of three regards.

First, That the natural Commodities of the Nation may be improved.

Secondly,

Secondly, That the poorer ſort of people, be ſet a work.

Thirdly, That the value of Money be rightly ballanced.

For as on the one part, though the people be never ſo laborious, if the natural Commodities of the Iſland be not improved by their labour, the people can never grow much richer, than barely for ſubſiſtence during their labour: ſo neither can the improvement of the natural Commodity inrich the Kingdom, ſo long as many mouths are fed upon the main ſtock, and waſte the ſame by idleneſs, and prodigality: Nor though both theſe ſhould concurr, yet cannot the Kingdom be ſaid truly to be rich, unleſs by intercourſe and Traffick, there be an emptying out of the ſuperfluity of ſuch Commodities by way of barter, or otherwiſe, for ſuch Foraign Commodities, whereof this Nation ſtandeth in moſt need, for ſupply of all occaſions. For God hath ſo attempered the whole Regiment of the earth, in ſuch manner, that no one Nation under Heaven, can well and comfortably ſubſiſt in, and by it ſelf, but all muſt give and receive mutual Commodity from each other: otherwiſe, ſuperfluity would make any Commodity (though in it ſelf never ſo precious) vile; and little conducible to the inriching of the Nation. Now for the compaſſing of all theſe the Wiſe Men of theſe times, firſt took into their conſideration the principal Commodities of this Kingdom, and becauſe they found them impounded in the Staple, they ſet all at liberty to buy and ſell the ſame as they pleaſed: And thus began a Free-Trade of Wool, throughout the Realm. and matter for employment by every man that would: but this continued not long. The people ſoon had Commodity enough for work, and Kings liked too well of the reſtraining of that liberty, in order to their own benefit, and ſoon found out occaſions to reconcile the reaſon of State with their own Intereſts, and at length ſettled the Staple in certain places in ſeveral parts of the Kingdom; but this extended only unto the Commodities of Wool, Leather, and Lead; for as yet the Manufactures were not come to Matu-

2 *E.* 3. *cap.* 9.

27 *Rich.* 2 *c.* 3.

rity. Secondly, the endeavour was to advance Manufacture, and principally ſuch of them as are made of the Staple Commodities, amongſt all which, Wool had the precedency, as being the moſt principal and ancient Commodity of the Kingdom; and the Manufacture of Wool of long uſe, but had received little encouragement before theſe times. For that it formerly had been the principal flower in the Flemiſh Garden, and nouriſhed from this Nation, by the continual ſupply of Wool that it received from hence, which was the principal cauſe of the ancient League between the Houſe of *Burgundy*, and this Crown. But *Edward* the Third, was now too well acquainted with the Flemings Affairs, by a joynt Engagement with them in the Wars of *France*, and therein had gained ſo good an opinion amongſt them, that he might adventure to change a Complement for a Courteſie. The Staples beyond the Sea were now taken away, he now inhibiteth the Importation of Foraign Cloaths, and having gained theſe two ſteps onward of his way, he repreſents to the Flemings their unſettled Condition, by theſe bordering Wars with *France*, the peaceable Condition of *England*, and Freedom of the people; then propounds to them an Invitation to come over into *England*, promiſeth them ſhare and ſhare like with his own people, with ſuch other Immunities, as they take his offer, come over, and brought their Manufacture with them, which could never after be recalled: So as now the Wool, and Manufacture dwell together, and like to Man and Wife, ſo long as they care for one another, both will thrive, but if they come to play their games apart; both will be loſers in the Concluſion.

11 *E.* 3. *cap.* 2. 3, 5.

The third ſtep to the advance of Trade, was the Exportation of the ſurpluſage of the Staple Commodities, that remained over and beſides that proportion that ſhould ſuffice for the Manufactures; to which end, it was ordered, that no Wool ſhould be Exported till it had remained at the Staple by the ſpace of fifteen days. That time was neceſſary, and longer time might have been Convenient, but that the

31 *E.* 3. *c.* 8.

Markets

Markets beyond the Sea could not be delayed longer time, without much damage to the Merchant and Owner, for as much as Winter-time is no time to prepare Wool for the Manufacture, and by over-long continuance of the Commodity upon the hand of the Merchant, or Owner, both the Commodity, and the Manufacture might surfeit, lye in despair, and Trade choaked thereby. For it's a necessary preparative to Trade, to keep the Nation in some kind of hunger after the Staple Commodities, so as the main stock be not too great to occupy, and yet to leave enough to use. But because this Nation formerly had been, and as yet were used too much to Foraign Manufactures, the Importing of which, did debase the Home-made Manufactures, and discouraged that work; therefore the Law was made to reduce the vanity of Apparel, (which infected these times) to more Sobriety.

Some delight in Foraign Commodities, and Manufactures, is doubtless profitable both for Trade and Shipping; so as what is Imported, exceeds not what is Exported: for too much of that makes the Domestick Commodity contemptible, the Nation poor, and the people want work, because it's a noted vanity of this Nation, That they love things far fetcht, and dear bought. As a cure therefore to this disease, English Cloth by Law is enjoyned to be worn by all persons, under the Degree of a Lord, and so the former Inhibition of Importation of Foraign Cloths was strengthned thereby. And because the English Clothiers should not take advantage hereby, to raise the price of their Cloths to their own covetous pin: Therefore the Law also settled a certain price and measure, and the same before sale was to be allowed upon view, and for the goodness of the Cloths, and perfect working thereof; Laws were likewise made against Exportation of all such as were not perfectly made.

43 *E.* 3. *c.* 1.
11 *E.* 3. *c.* 2, 3.
27 *E.* 3. *c.* 4.
7 *Rich.* 2. *c.* 9.
17 *Rich.* 2. *c.* 2.
50 *E.* 3. *cap* 7.

A fourth step in the advancement of Trade, was the compelling men to work; for when publick employment calls men forth for service in the Field; their minds once in Commotion, or upon the Wing, can hardly settle any where, or stoop 4.

ſtoop to the Perk again, unleſs upon hope of prey or gain to be gotten thereby. Such were the times of *Edward* the Third, wherein partly for that cauſe, and partly for the ſcarcity of men left from the Sword and Peſtilence, not only workmen were ſcarce and dear, but even the Maſs it ſelf was grown ſtately, the private delights of Kings and great Men, and ſcarce vouchſafing to be ſeen by common gaze, but at a great diſtance: The Prieſts had little Charity, and the poor had as little money; ſo as no peny, no *Pater Noſter*. A ſick and very crazy time queſtionleſs was it, when the Clergy were ſtately, and the poor idle. The Prieſts wages for this cauſe, are now ſettled, and they that would get much, muſt get many littles, and do much: but the greater ſore was amongſt the poorer ſort; either they would not ſerve, or at ſuch wages, as could not conſiſt with the price of the Cloths, and the ſubſiſtence of the Clothier. Laws therefore are made to compel them to work, and to ſettle their wages; ſo as now it's as beneficial to them to ſerve the meaner ſort of Clothiers, as the richer ſort: For the Maſter muſt give no more, nor the Servant take more, and thus became labour currant in all places.

36 E. 3. c. 8.

23 & 25 E. 3. 2 Rich. 2. c. 8

A fifth means to advance Trade, was the ſettling of a Rule upon Exportation and Importation: this wrought a double effect, *Viz.* The enriching of this Kingdom with Foraign Commodities, and the maintaining of Shipping, which was and is a principal means, not only of riches, but of ſtrength unto all Sea-bordering Countries, eſpecially regard being had to theſe three conſiderations.

Firſt, That Importation do bring in more profit, than Exportation diſburſeth.

Secondly, That both Exportation, and Importation be made by Shipping belonging to this Nation, ſo far as may conſiſt with the benefit of this Nation.

Thirdly, That the Exportation be regulated to the overplus, ſaving the main ſtock at home. The truth of the firſt will be evident from this ground, That no Nation can be rich that receives more dead Commodities from abroad, than it can ſpend at

at home, or vend into Foraign parts, especially if it be vended in its proper kind, and not in Money; and therefore the Laws provided, that no Merchant should Export more Money, than he Importeth, and what he doth Export must be of the new stamp, which it seemeth was inferiour in value to the old: yet the times may prove so penurious, that this rule may be waved for a season. 27 E. 3.

The second is no less beneficial; for as it is in War, so in all Trades; the greater the number is that is employed, the more effectual the Issue will be: and therefore though it in the general be more beneficial, that all Exportation and Importation might be by our own shipping; yet in regard times may be such, as now they were, that the shipping of this Nation is more than ordinarily employed for the service of the State: And that every Nation striveth to have the benefit of Exportation by Vessels of their own.

And Lastly, in regard the case may be such, as Importation may be, at a cheaper rate by Foraign Vessels, and Exportation likewise may for the time be more prejudicial to this Nation, if done by our own shipping, than those of other Nations. Therefore the course must be changed, so far forth as will stand with the occasions of the State, and common profit of this Nation. And for these causes, and such like, in the times whereof we now Treat, the Laws often varied; sometimes no Staple Commodity must be Exported in English bottoms; sometimes all must be done by them, and within a year again that liberty was restrained; and after that, liberty given to Foraigners to Export as formerly. 27 E. 3. 43 E. 3. c. 11. 5 Rich. 2. c. 3. 6 Rich. 2. c. 8. 14 Rich. 2. c. 5.

The third and last Consideration is as necessary as any of the former; for if Trade be maintained out of the main stock, the Kingdom in time must needs be brought to penury, because it is their Magazine: and for this cause it was provided, that all Wool should remain at the Staple fifteen days, to the end it might be for the Kingdoms use: if any one would buy, they must do it within that time, otherwise it might be exported. 31 E. 3. c. 8.

The

6. The ſixth means of advancement of Trade, was the ſettling of the Staple; for as it was an encouragement to the firſt eſtabliſhing of the Manufacture, that the Staples were let looſe, ſo when the Manufactures had taken root, the Staple eſpecially now fixed to places within this Kingdom, brought much more encouragement thereto.

Firſt, For preſerving a full Market, for whilſt the Commodity lies ſcattered in all places, the Market muſt needs be the leaner; partly in regard the Commodity lies in obſcurity, and partly becauſe when it is known where, yet it's not eaſily diſcovered whether it be vendible or not; and beſides ſmall parcels are not for every man's labour, and the greater are not for every man's money.

Secondly, Staples are convenient for the ſtating of the general price of the Commodities; in regard the quantity of the Commodity is thereby the more eaſily diſcovered, which commonly maketh the price. And the quantity of the Commodity thus diſcovered will not only ſettle the price to it ſelf, but alſo ballance the price of the Manufacture.

Thirdly, The Staple having thus diſcovered the quantity of the Commodity, will be a ready way to ſettle the quantity of the main Stock, that muſt be preſerved, and regulate Exportation as touching the over-plus. But it cannot be denyed that the firſt and principal mover of the making of the Staple, was the benefit of the Crown: for when the Commodity was gone beyond the Sea, it importeth not to the Subjects in *England*, whether the ſame be ſold at one place, or more, or in what place the ſame be ſettled, until the Manufacture was grown to ſome ſtature; and then the place became Litigious. The benefit of Exportation pretended much intereſt in the ſettling thereof beyond the Sea, but in truth it was another matter of State; for when it was beyond Sea, it was a moveable Engine to Convey the King's pleaſure or diſpleaſure, as the King pleaſed; for it was a great benefit to the Countrey, or place where ever it ſettled; or elſe it moved or ſtayed according to the inclination of the people where it was, either for War, or Peace. But on the

the contrary, the Intereſt of the people began to interpoſe ſtrongly: And for theſe Cauſes the Parliament likewiſe intermedled in the place; and thus the Scene is altered: ſometimes it's beyond the Seas, in one place, or in another: ſometimes in *England*. In *Edward* the Third's time, we find it ſometimes at *Calis*, ſometimes in *England*: In *Richard* the Second's time; we find it again beyond the Seas, at *Middleburgh*, thence removed to *Calis*, and after into *England*: where at length the people underſtood themſelves ſo well, that the Parliament ſettled the ſame, it being found too burthenſome for the Manufactures to travel to the Staple beyond the Seas, for the Commodity that grew at their own doors, beſides the inhanſing of the price, by reaſon of the carriage, which falling alſo upon the Manufactures, muſt needs tend to the damage of the whole Kingdom. This was one way indeed, and yet poſſibly another might have been found; for if a Computation had been made of the main Stock, and a Staple ſettled within the Kingdom for that, and the over-plus Exported to a Staple beyond the Sea, it might have proved no leſs commodious, and more complying. It is very true, that there are many that call for the liberty of the people, that every man may ſell his own Commodity as he pleaſes; and it were well that Men would conſider themſelves as well in their Relations, as in their own perſonal reſpects: for if every man were independent, his liberty would be in like manner independent; but ſo long as any Man is a Member of a Common-wealth, his liberty muſt likewiſe depend upon the good of the Common-wealth; and if it be not good for the Nation, that every Man ſhould ſell his own Commodity as he pleaſeth; he may claim the liberty as a Free-man, but not as an Engliſh-man; nor is that liberty juſt, ſo long as his Countrey hath an intereſt in his Commodity for it's ſafety and welfare, as in his own perſon. I do not aſſert the manner of buying the Staple Commodities, by Merchants of the Staple, to ſell the ſame again in kind for their private advantage; divers limitations muſt concurr to ſave it from an unlawful ingroſſing; nor doth it appear to

43 *E. 3. cap. 1.*
12 *Rich 2. c. 6.*
14 *Rich. 2. c. 11.*

me that the Staplers in these times used such course, or were other than meer Officers for the regulating of the Staple, in nature of a Court of Piepowders, belonging to some Fair, or Market. Nevertheless, I conjecture that it may well be made evident from principles of State, that Mart, Markets, and Staples of Commodities, that are of the proper Off-spring of this Nation, are as necessary to Trade, as Conduits are to places that want water.

7. The seventh and last means that was set on foot in these times, for the advance of Trade, was the regulating of the Mint, and the currant of Money. This is the life and soul of Trade, for though exchange of Commodities may do much, yet it cannot be for all, because it is not the lot of all to have exchangeable Commodities, nor to work for Apparel, and Victual. Now in the managing of this trick of Money, two things are principally looked unto; First, that the Money be good and currant. Secondly, that it should be plentiful. As touching the excellency of the Money, several Rules were made, as against embasing of Money, against Foraign Money not made currant, against counterfeit and false Money: For according to the goodness of the Money, so will the Trade be more or less, for the Merchant will rather lose in the price of his Commodity in Money, than in exchange for other Commodity, because the value thereof is less certain, and the Transportation more chargeable.

25 E. 3 Stat 5 cap. 13.
6 E. 3. cap. 2. & 3.

Secondly, as touching the plenty of Money, that is as necessary to the advance of the Trade, as the goodness of it: for according to the plenty thereof, will be the plenty of the Manufactures, because Handicrafts-men having no Commodities but their labour, cannot work for exchange, nor can exchange supply Rents and maintenance to the greater sort of people. To this end therefore it is provided against melting of Money, and Exportation of Silver and Gold: And yet to encourage or not discourage Importation of Silver and Gold, liberty was given to every man to Export so much as they did Import, provided that what they carry away, must be of the new stamp, or Minted in this Nation. By this means Bullion came in with proba-

6 E. 3. c. 2, 3. 17 Rich. 2. c. 1.

probability, that much thereof would remain in the Nation in lieu of Commodities exported, or if not, the greater part; yet at leaſt the Mint gained, and that was ſome benefit to the Nation. 27 *E.* 3.

Thirdly, for the fuller currance of the Money, the Iſſue was eſtabliſhed in ſeveral parts of this Kingdom, according to the ancient cuſtom, and this was advantageous both to the Mint, and to the ſtock of Money in the Kingdom. This eſtabliſhment was with this difference, that though the Mint was ſettled by the Parliament, yet the Exchange was left to the Directory of the King and his Council; becauſe the Exchange is an uncertain thing, ſubject to ſudden alteration in other Nations, and it's neceſſary that in this Countrey it be as ſuddenly ballanced with the Exchange in other Countreys, or in a ſhort time the Nation may receive extreme damage. In regard whereof, and many other ſudden exigencies in Trade, it ſeemeth to me convenient, That a particular Council were eſtabliſhed for continual influence into all parts of theſe Dominions, to take into conſideration the quantity of the Staple Commodities, neceſſary to be retained as a Stock at home, for the uſe of the people, and the Manufactures; and accordingly to ballance the Trade of Exportation and Importation; by opening and enlarging, or ſhutting, and ſtraitning the Stream, as occaſion doth require. 18 *E.* 3. *c.* 6. 18 *E.* 3. *c.* 6 25 *E.* 3. *Stat.* 5 *cap.* 12.

And laſtly, to watch the courſe of the Exchange in Foraign parts, and to parallel the courſe thereof in this Land thereto: For otherwiſe, the publick muſt neceſſarily ſuffer, ſo long as private men ſeek their own particular intereſts only in their courſe of Trade.

CHAP. VIII.

Of Legiance, and Treason, with some Considerations upon Calvin's *Case.*

AS times change manners, so do manners change Laws: For it's the wisdom of a State, when it cannot overrule occasion, to pursue and turn it to the best issue it can. Multitude of Laws therefore are not so much a sore to the people, as a Symptom of a sore people; yet many times Laws are said to be many, when as they are but one, branched into many particulars, for the clearing of the peoples understanding, (who usually are not excellent in distinguishing,) and so become as new Plaisters made of an old Salve, for sores that never brake out before. Such sore times were these, whereof we now Treat; wherein every touch made a wound, and every wound went to the heart, and made the Category of Treason swell to that bigness, that it became an *individuum vagum*, beyond all rule, but the present sence of timerous Judges, and a touchy King. Thus were many of the ignorant and well-meaning people in an hideous danger of the gulf of forfeiture before they found themselves nigh the brim.

All men do agree that Treason is a wound of Majesty, but all the doubt is, where this Majesty resteth originally, and what is that Legiance which is due thereto, the breach whereof amounteth to so high a censure; for some Men place all Majesty in one Man, whom they call an absolute Monarch. Others in the great men, and others in the people, and some in the concurrence of the King and body of the people: and it is a wild way to determine all in one conclusion, when as the same dependeth wholly upon the constitution of the body; look then upon *England* in the last posture, as the rigider sort of Monarchial politicians do, and Majesty will never be in glory, but in the concurrence of the King and Parliament,

ment, or convention of Eſtates, and ſo upon the whole account it will be upon the people, whoſe welfare is the ſupreme Law. *Rome* had Kings, Conſuls, Dictators, Decemviri, and Tribunes long before the Orator's time, and he ſaw the foundation of an Empire, or perpetual Dictatorſhip in the perſon of the firſt of the *Cæſars*; any of all which might have challenged the ſupremacy of Majeſty above the people: and yet the often change of Government ſhewed plainly that it reſted upon another pin; and the Orator in expreſs words no leſs; when ſpeaking of the Majeſty of that Government, he allotteth it not to thoſe in chief command, but defineth it to be, *magnitudo populi Romani*; afterwards when the pride of the Emperours was come to its full pitch in the times of *Auguſtus* and *Tiberius*; an Hiſtorian of thoſe times in the life of *Tiberius* tells us, that he declared the bounds of Treaſon to be determined in three particular inſtances, of Treachery againſt the Army; Sedition amongſt the people, and violating the Majeſty of the people of *Rome*; in all which men were not puniſhable for words, but actions and endeavours. I do not herein propound the Government of the Roman Empire as a model for *England*, but *à majori*, may conclude, that if the proper ſeat of Majeſty was in the people of *Rome* when Emperours were in their fulleſt glory, it's no defacing of Majeſty in *England* to ſeat it upon the whole body, from whom the ſame is contracted in the repreſentative, and ſo much thereof divided unto the perſon of the King, as any one member is capable of, according to the work allotted unto him. Theſe ſeveral ſeats of Majeſty making alſo ſo many degrees, do alſo imply as many degrees of wounding, for it's written in nature, that the offence tending to the immediate deſtruction of the whole body is greater than that which deſtroyeth any one member only, and when the written Law maketh it Treaſon to compaſs the deſtruction of the King's Perſon, it leaveth it obvious to common ſence, that it's a higher degree of Treaſon to compaſs the deſtruction of the repreſentative, and above all, to deſtroy the whole body of the people; crimes that never entred into the conceit of wickedneſs it ſelf

Cic. partit. Orat.

Si quis majeſtatem populi Romani minuiſſet, Tacit. An. 1.

ſelf in thoſe more innocent times; much leſs ſaw they any cauſe to mention the penalty by any written Law. Nevertheleſs becauſe many ſad examples had accurred within the memory of this preſent Age, of the danger of the perſon and honour of Kings; and yet on the other ſide they ſaw that in ſuch caſes of Treaſon the King's honour was made of reaching Leather, and might eaſily be ſtrained within the compaſs of a wound of Majeſty: therefore *Edward* the Third imitating *Tiberius*, reduced the crime of wound of Majeſty in the Perſon of the King, into certain particular inſtances, out of the compaſs whereof, the Judges of the Law in ordinary courſe muſt not determine Treaſon. Theſe concern either the ſafety of the perſon of the King, or of the ſucceſſion in the Royal Throne; or laſtly, the ſafeguard of the publick right by the board and Privy-Seal, the value of Money, and by perſons in matters of Judicature judicially preſiding, all of them reflecting upon the King, conſidered in his politick capacity; for otherwiſe many crimes might have been mentioned, more fatally reflecting upon the King in his natural capacity, which nevertheleſs are omitted as not worthy of ſo high a cenſure. Other Treaſons are left to the determination of the Parliament as occaſion ſhould offer it ſelf, whereof divers examples of a new ſtamp accurred within forty years next enſuing, which were of a temporary regard, and lived and died with the times.

25 *E.* 3. *Stat.* 5. *cap.* 2.

17 *R.* 2. *n.* 20, 21.

3 *R.* 2. *n.* 18

22. *Aſſ. pl.* 29

Stat. 11 *R.* 2.

To theſe two notions of Majeſty and Treaſon, I muſt add a third, called Legiance, for it is that which maketh Majeſty to be ſuch indeed, and lifteth it into the Throne, and whereof the higheſt breach makes Treaſon: and becauſe that which hath been already ſaid reflecteth upon an opinion, or rather a knot of opinions (for I find them not punctually adjudged) in *Calvin*'s Caſe, I muſt a little demurr to them; becauſe as their ſence is commonly taken, it alters the fundamental nature of the Government of this Nation from a Common-weal to a pure Monarchy. In handling of this caſe the honourable Reporter took leave to range into a general diſcourſe of Legiance, although not directly within the concluſion of the caſe; and therein firſt ſets down the general nature thereof, that

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it is a mutual bond between an Engliſh King and his people; and then more particularly ſets forth the nature of this bond in the ſeveral duties of obedience and fealty, *fo.* 5. *a.* and thoſe alſo in their ſeveral properties, *Viz.* natural, abſolute, *fo.* 7. *a.* due to the King *omni, ſoli, & ſemper*, *fo.* 12. *a.* in his natural and not publick capacity, *fo.* 10. *a.* whereas he ſaith, this bond is natural, he meaneth that it's due by birth, *fo.* 7. *a.* By abſolute (if I miſtake him not) he meaneth, that it is indefinite, *fo.* 5. *b. Viz.* not circumſcribed by Law, but above Law, and before Law, *fo.* 13. *a.* and that Laws were after made to enforce the ſame by penalties, *fo.* 13. *b.* and therefore he concludeth that this legiance is immutable, *fo.* 13. *b.* and *fo.* 14. *a.*

Thus having ſtated the point as truly as I can, both for the nature of Legiance, and the object thereof, *Viz.* the King, and not the people, otherwiſe than in order to the ſafety and honour of the King's perſon, conſidered in his natural capacity as he is a Man; I ſhall in the next place examine the grounds as they are ſeverally ſet down, and therein ſhall lead the Reader no further than the Reporters own conceſſions. Not troubling the Reader with any doubt, whether this bond conſiſts in obedience only, or in that fealty: and in all ſhall ever be mindful of the honour of that Pen with which I have to deal.

Firſt, whereas it is ſaid, that Engliſh Legiance is natural, and grounded upon the birth of each party within the King's Dominions and protection, it needeth no debate, ſo as the ſame be taken, *ſano ſenſu*, *Viz.* for a qualified Legiance bſared of thoſe ſublimities of abſolute, indefinite, immutable, &c. for otherwiſe if ſuch a high ſtrain of Legiance be due from every Engliſh-man by birth; then all the *Magna Charta*, or Laws concerning the Liberties of the people come too late to qualifie the ſame, becauſe they cannot take away the Law of nature, *f.* 14. *a.* and thus the party once born Engliſh muſt for ever remain abſolutely obliged to the King of *England*, although haply he lives not two Months under his protection all his enſuing life time.

Secondly,

Secondly, the Legiance of an Englifh man to his King ariſeth from that civil Relation between the two callings of King and Subject, and therefore it is not a natural bond which cannot be taken away. The firſt is true by the Reporter's own conceſſions; *Protectio trahit ſubjectionem, & ſubjectio protectionem*; ſo he ſaith, *fo.* 5. *a. fo.* 9. *b.* and therefore though it be granted that Magiſtracy in general is from nature, as he ſaith, *fo.* 13. *a.* yet of weak birth is that inference which he maketh, *Viz.* That Engliſh Allegiance is a principle in nature. Unleſs it be alſo admitted that all Men on earth that ſubmit not to Engliſh Legiance do ſin againſt nature. The difference then will ſtand thus, Magiſtracy is founded in nature, therefore Legiance alſo. But Engliſh Magiſtracy is from civil conſtitution, therefore is Engliſh Legiance of the like nature. In the next place, the Reporter ſaith, that before any municipal Law was made, Kings did *dare jura*, and he mounts as high for an example as the Trojans Age by the Teſtimony of *Virgil:* but I believe he intended not much ſtrength in this, ſeeing it's well known by any that knows the Scriptures, that there were municipal Laws given, and that concerning the office of a King by *Moſes*, which were more ancient than thoſe of *Troy*, and long before the time of *Virgil*, who neither tells us in what manner thoſe Trojan Laws were made, though the Kings gave them, nor if all were according to the Reporters ſence, is the teſtimony of a Poet (who ſometimes uſeth his *Poetica licentia*) to be taken in *terminis*. In the next place, the Reporter vouches the Teſtimony of *Forteſcue*, *c.* 12. *&* 13. which is as abſolutely oppoſite to the main point in hand, as any Pen can declare. for he tells us of divers ſorts of Kingdoms, ſome gotten by Conqueſt, as thoſe of *Nimrod* and *Belus*, *&c.* But ſaith he, there is a Kingdom politick, which is by the aſſociation of men by conſent of Law, making one chief, who is made for defence of Law, and of his Subjects Bodies and Eſtates, and he cannot govern by any other power; and of this nature, ſaith he, the Kingdom of *England* is, *fo.* 30, 31, 32. A ſecond piece of the foundation of this opinion of the Reporter is taken, *ab inane*, it is a vain thing, ſaith he, to preſcribe Laws

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but where by Legiance foregoing people are bound to obey: but this compared with the words of *Forteſcue*, formerly mentioned, falls of it ſelf to duſt, and therefore I ſhall not further enlarge concerning it.

Thirdly, The Reporter brings in to help the matter, the conſent of the Law in elder times, by certain Caſes vouched to that purpoſe; the firſt concerning the Legiance of Children to Parents, which cometh not to this caſe, becauſe it is a Legiance of Nature, and this Legiance whereof we ſpeak is yet under a litigious Title. And I ſuppoſe will in the concluſion be found to reſt only upon a civil conſtitution, therefore I leave that. The ſecond is, that a Man attainted and outlawed, is nevertheleſs within the King's protection, for this (ſaith the Reporter) is a Law of Nature, *Indelibilis & immutabilis*, and neither Parliament nor Statute can take this power away, *fo.* 13. *b.* 14. *a.* and therefore the Reporter concludes, that as well the Legiance of the Subject as the protection of him by the King are both of them from the Law of Nature. An opinion that ſpeaks much mercy, yet it ſeems ſtrange, conſidering the Pen; for if it be a Law of Nature, and immutable, for the King to protect perſons attainted, then muſt no ſuch perſon ſuffer, for if he be under the King's protection, that being by a Law of nature, cannot be changed by any poſitive Law, as the Reporter ſaith, nor can the King be ſo bound by any ſuch Statute, but by a *non obſtante* he can ſet himſelf at liberty when he pleaſeth, and then the iſſue will be this, the King hath a natural power to protect the perſons of Law-breakers from the power of the Law, therefore much more their Eſtates; and then farewel all Law, but this of the King's Natural protection. I ſay that theſe are of a high ſtrain, conſidering what the Reporter ſpeaketh elſewhere. But to purſue his inſtance, he ſaith, that the King hath power to protect an attainted perſon, that if any Man kill him without warrant he is a Man-ſlayer; and yet this perſon attainted hath loſt the legal protection. It's true, yet not to all intents, for by the ſentence of the

11. *Co. fo.* 88.
8. *Co. fo.* 20.
4. *Co. fo* 35.
7. *Co. fo.* 36.

Law, his life is bound up under the Law of that Sentence,
35 H. 6. 63. *Viz. That he must not suffer in other manner than the Sentence determineth, nor before Warrant of Execution issue forth to that end.* And notwithstanding the Sentence, yet the Law leaveth him a liberty of Purchase, or Inheritance, though to the use of the Crown, and therefore in some respects, the Law protects his Person so long as he lives, and the King's Natural Protection is in vain in such Cases.

Lastly, suppose the King hath a power of *Non obstante*, if the same be allowed to him in a limited way by the Law, it is no Argument to prove the King's natural power, which is driven at under natural Legiance, much less if it cannot be made forth that the Law doth allow any such power of *Non obstante* at all; but by the iniquity of the times permitteth the same to subsist, only to avoid Contention, as it came into this Kingdom by way of Usurpation. And thus I have only discovered the Foundation of this first qualification, which I shall only leave naked, supposing that no man seeing it, will build at all thereupon.

The second property that cometh to be considered, is, *That English Legiance is absolute, fol. 5. b. fol. 7. a.* which is a word of a vast extent, serving rather to amaze men's apprehensions, than to enlighten them; and therefore the Reporter did well not to trouble himself or the Reader, in the clearing or proof thereof, but left the point rather to be believed, than understood, nor shall I in the Negative; for God himself can have no other Legiance from an Englishman, than absolute Legiance; and Kings being (as other men) subject to err, especially in this point of Prerogative, are much rather subject thereto, being misled by such Doctrines as these are; the Scripture determines this point, and cuts the knot in
Act. 14 19. sunder.

The third property of English Legiance, which the Reporter insisteth upon, is that it is indefinite; which he explaineth to be, *Proprium quarto modo*, so as it both Universal and Immutable, *fol. 5. b. fol. 12.* and neither defined by Time,

Time, Place, or Perſon: As touching the Time, and Perſon, the Reporter enlarged not at all, therefore I ſhall only leave the Reader to chew upon the point, ſuppoſing himſelf in the firſt times of *Edward* the Fourth, when *Henry* the Sixth was then alive; and let him reſolve to which of them his Legiance had been due, conſidering them both in their natural capacity, as the Reporter would have it. But as touching the place, it's reported that Engliſh Legiance is not only due from an Engliſh-man, to an Engliſh King in *England*; but in all places of the King's Dominions, though otherwiſe Foraign, as to the power of the Law of *England*: yea, ſaith the Reporter, as far as the King's power of protection doth extend. And yet this had not been enough, if the Premiſes be granted: for if this Legiance whereof we ſpeak be abſolute, and *omni ſoli & ſemper*, then is it due to the King, from an Engliſh-man, *ubivis Gentium.* Nevertheleſs, to take the Reporter in a moderate ſence; it is worth conſideration, whether Engliſh Legiance in the days of *Edward* the Third extended as far as the King's power of protection; when as he had the Crown of *France* in a Foraign right to that of *England.* In this the Reporter is extremely poſitive upon many grounds which he inſiſteth upon.

Firſt, he ſaith, that *Verus* and *Fidelis* are qualities of the mind, and cannot be circumſcribed within the predicament of *Ubi*; and upon this ground he might conclude, that this Legiance is due to the King from an Engliſh-man all the world over, as well as in all the King's Dominions; but concerning the ground, it may be denyed, for though ſimply in it ſelf conſidered as a notion, Verity or Fidelity are not circumſcribed in place, yet being qualities of the Soul, and that being in the body, in relation thereunto, it may be in the predicament of *Ubi*; for where-ever that Body and Soul is, there is Faith and Truth, according to it's model, which though not abſolute, and indefinite, yet if according to the Laws of the place wherein the Man is, he is truly ſaid to be *Verus & Fidelis.*

Secondly, the Reporter argueth, that the King's protection

is not Local, or included within the bounds of *England*; therefore alſo is not the Legiance: for, *Protectio trahit Legiantiam, & Legiantia Protectionem*: Had this reaſon been formed into a Syllogiſm, it had appeared leſs valuable; for the protection of an Engliſh King, *qua talis*, of an Engliſhman, is local and included within the bounds of the Kingdom: But if the ſame King be alſo King of *France*, or Duke of *Aquitane*, and an Engliſh-man ſhall travel into thoſe parts, he is ſtill under the ſame King's protection, yet not as King of *England*, but as King of *France*, or Duke of *Aquitane*, otherwiſe, let the party be of *France*, or *Aquitane*, or *England*, all is one, he muſt be (whether French or Engliſh) under an unlimited abſolute protection, without regard had to the Cuſtoms or Laws of the place, yea, contrary to them; which I believe the Reporter never intended to affirm.

Thirdly, The Reporter falleth upon the matter in Fact, and tells us, that the King of *England* did many times, *De facto*, grant protections to perſons in places out of the Engliſh Confines, and it will not be denyed: But never was any abſolute and indefinite protection ſo granted; for the protection extends to defence from injury, and all injury is to be expounded and judged according to the Laws of the place: Nor do any of the Precedents vouched by the Reporter clear, that the King of *England* did grant, as King of *England*, Protection to any Engliſhman in any parts of the King's Dominion beyond the Seas, which was not qualified according to the Laws and Cuſtoms of that place: eſpecially it being apparent, that an Engliſh King may hold Dominion in Foraign parts in Legiance under a Foraign King; as *Edward* the Third held the Dutchy of *Guien*, and therefore cannot grant abſolute protection in ſuch place, nor receive abſolute Legiance from any perſon there being.

Fourthly, The Reporter ſaith, That the King of *England* hath power to command his Subjects of *England* to go with him in his Wars, as well without the Realm of *England*, as within the ſame; therefore the Legiance of an Engliſh-

man;

man to his King is indefinite, and not local, or circumscribed by place, or within the Kingdom of *England*. Although the first of these be granted, yet will not the inference hold, for possibly this may arise from the constitution of a positive Law, and not from Natural or absolute Legiance, nor doth any Authority by him cited justifie any such Legiance: But I cannot agree the first; for it is not true, that the King hath any such power from his own personal interest; nor doth the Authority of former Ages warrant any such matter: for a fuller disquisition whereof I shall refer the Reader to the eleventh Chapter ensuing, because the *Whole matter concerning the Militia cometh there to be handled in course.*

Fifthly, To close up all the rest, the Reporter brings, *The Testimony of the Judges of the Common Law out of the Testimony of* Hengham; *wherein an Action was brought by a French woman against an English man, who refused to answer, because the Plaintiff was a French-woman, and not of the Legiance or Faith of* England: This was disallowed by the Judges, because Legiance and Faith was referred to *England*, and not to the King. Thereupon the Defendant averred, that the Plaintiff is not of the Legiance of *England*, nor of the Faith of the King: And upon this plea thus amended, the Plaintiff gave over her Action. The Reporter from hence observeth, that Faith and Legiance is referred to the King, indefinitely, and generally; and therefore it is so due to him. The reason might have had more force, had the Object of Allegiance, or the nature thereof, been the point in question; but neither of them coming to debate, and Allegiance being subjected to *England*, and Faith to the King, I see not what more can be concluded from hence, but that Allegiance from an English-man is due to *England*, and Faith to the King, which I suppose must be intended to be in order to that Allegiance; because by the former plea, *England* had them both, and the King was wholly left out in the Case. Nevertheless, I rather think that the present point in controversie will receive little light here from on either part.

We-

We are now come to the fourth property of Engliſh Legiance, that it is due to the King's Natural Capacity, and not to his Politick Capacity, or due to the Office of a King in regard of the Perſon of the Man, and not to the Perſon in regard of the Office, *fol.* 20. And becauſe this is of no ſmall importance, neither eaſily underſtood, nor granted: Therefore he backeth his Opinion by many reaſons.

Firſt, he ſaith, that the King ſweareth to his Subjects in his Natural Capacity, therefore the Subjects ſwear to him in his Natural Capacity. This reaſon was intended to be taken from Relatives, and then it ſhould have been thus: *A King doth ſwear to his Subjects in their Natural Capacity, therefore Subjects ſwear to a King in his Natural Capacity*: but it being otherwiſe, it is miſtaken, and proves not the Point. Yet if we ſhould take the Reporter *in ſano Senſu*, there is no queſtion but the Oath is made to the Natural Capacity; yet not Terminative, more than the Oath of the Tenant to his Lord, which this Author pleaſeth to couple with the mutual dependence between King and Subject, *fol.* 4. *b.* 5. *a.* Nor doth the Oath of an Engliſh-man bind him to the Obedience of all, or any Commands, which the King ſhall give in relation only to his Natural Capacity, or in oppoſition to his Politick Capacity: Nor will the Reporter himſelf allow that the Politick Capacity of the King can be ſeparate from his Natural Capacity, *fol.* 10. And yet it is evident that a King may in his Natural Capacity command that, of which his Politick Capacity cannot give Allowance.

The ſecond reaſon of this Opinion is taken from the nature of Treaſon, which ſaith the Reporter is committed againſt the Natural Perſon of the King; and this is againſt due Legiance, according to the form of Indictments, in that Caſe provided. This is not demonſtrative, becauſe that crime which is done againſt the Natural perſon of a Man may as well extend to it, in relation to his Place, or Office; and ſo may Treaſon be plotted againſt the Natural Perſon of a King, as he is King: neither is there any other difference between the murther of a King, and

and a private Man, but only in regard of the Place and Office of a King, which makes the murther of him Treason; for which cause all Indictments that do conclude, *Contra Legiantiæ debitum*, do as well also conclude, *Contra Coronam & Dignitatem, &c.*

The third reason is this; A body politick can neither make nor take Homage, 33 *H.* 8. *Bro. tit. Fealty*: Therefore cannot the King in his Politick Capacity take Legiance. The first must be granted only, *Jub modo*, for though it cannot take Homage immediately, yet by the means of the Natural Capacity it may take such service; and therefore that Rule holds only where the Body Politick is not aggregate, and not one Person in several Capacities, for the Tenant that performs his service to his Lord, performs the same to his Lord in his Natural Capacity, but it is in relation to his Politick Capacity, as he is his Lord: For Lord and Tenant, King and Subject, are but Notions, and neither can give nor take service; but that Man that is Lord, or Tenant, or King, or Subject, may; even as the power of protection is in a King, not as he is a Man, but as a King.

The fourth reason is this, The King's Natural Person hath right in the Crown by Inheritance, therefore also in the Legiance of the Subject. This is the strength (as nigh as I can collect) of that which is set down as a sixth reason, but I make it the fourth: because the third as I conceive is but an illustration of the second; and the fifth is upon a supposal of a *Fides ficta*; whereas that Faith of an English Subject, which is according to Law, is the truer of the twain. But to the substance of this fourth reason: If the first be granted, yet the Reporter cannot attain his conclusion; for the King may in his Natural Capacity have right to the Crown by Inheritance, and yet not right in the Legiance of his Subjects, otherwise than in the right of the Crown; As in the Case of Lord and Tenant, the Lord may inherit the Lordship in his Natural Capacity, but the service is due to him as Lord, and not as by Inheritance in the service in the abstract. And though it be granted that the Legiance to a King,

King is of a higher ſtrain than that of a Tenant to his Lord, *fol.* 4. *b.* 5. *a.* Yet doth the Reporter bring nothing to light to prove them to be of a different Nature in this regard.

The fifth and laſt reaſon that cometh to conſideration, is, from a Teſtimony of the Parliament; for it is ſaid, That this damnable Tenet of Legiance to the King in his Politick Capacity is condemned by two Parliaments: But in truth I can find but one under that Title, that mentioneth this Opinion, and that is called, *Exilium Hugonis*, which in ſum is nothing elſe, but Articles containing an enumeration of the particular offences of the two *Spencers* againſt the State, and the Sentence thereupon: The offences are, for compaſſing to draw the King by rigour to govern according to their wills: for withdrawing him from hearkning to the advice of his Lords, for hindering of Juſtice, and Oppreſſion, and (as a means hereunto,) They cauſed a Bill or Schedule to be publiſhed, containing that Homage and Legiance is due to the King, rather in relation to the Crown, than abſolutely to his Perſon; becauſe no Legiance is due to him before the Crown be veſted upon him: That if the King do not govern according to Law, the Leiges in ſuch caſe are bound by their Oath to the Crown, to remove him either by Law or Rigour.

This is the ſubſtance of the Charge, and upon this exhibited in the Lords Houſe, the Lords, *ſuper totam materiam*, baniſh them before their Caſe is heard, or themſelves had made any appearance thereto: So as to the matter of this Schedule (which contains an Opinion ſuitable to the point in hand, with ſome additional aggravations) the Parliament determineth nothing at all: but as to the publiſhing of the ſame, to the intent to gather a party, whereby they did get power to act other enormities mentioned in the Charge; and in relation to thoſe enormities, the Lords proceeded to ſentence of baniſhment; all which was done in the preſence of the King, and by his diſconſent, as may appear by his diſcontent thereat, as all Hiſtorians of thoſe Affairs witneſs: and it is not probable that the King

King would have been discontented with the proceedings of the Lords in asserting the Prerogative of a King, in that manner of the Schedule, if he had perceived any such thing in their purposes. Add hereunto that the Lords themselves justified the matter of the Schedule in their own proceedings, all which tended to enforce the King to govern according to their Councils, and otherwise than suited with his good pleasure: By force they removed *Gaveston* from the King's presence formerly, and afterward the *Spencers*, in the same manner: So they removed the King from his Throne, and not long after out of the World.

Last of all, I shall make use of one or two Concessions, which hath passed the Reporter's own Pen (in this discourse of his) for the maintaining, that the Legiance of an English-man, is neither Natural, nor Absolute, nor Indefinite, nor due to the Natural Capacity, but qualified according unto Rules.

The first is this, English-men do owe to their Kings, Legiance according to the Laws, therefore is it not Natural, or Absolute, or Indefinite. The inference is necessary, for the latter is boundless, and Natural; the former is limited, and by civil Constitution: If any breach therefore of English Legiance be bounded by Law, then the Legiance of an English-man is circumscribed, and not Absolute, or Natural. The major proposition is granted by the Reporter, who saith, that the Municipal Laws of the Kingdom, have prescribed the order and form of Legal Legiance, *fol.* 5. *b.* And therefore if by the Common Law, the Service of the King's Tenant, as of his Mannor, be limited, how can that consist with the absolute Legiance formerly spoken of, which bindeth the Tenant, being the King's Subject, to an Absolute and Indefinite Service: Or if the Statute-Laws have settled a Rule, according to which each Subject ought to go to War in the King's service beyond the Sea, as the Reporter granteth, *fol.* 7. & 8. Then cannot the Legiance be absolute to bind the Subject to go to War according to the King's own pleasure.

Secondly, An English King's protection of his Subjects, is not Natural, Absolute, Indefinite, nor Originally extendeth unto them in their Natural Capacity: therefore is not the Legiance of an English Subject to his King, Natural, Absolute, Indefinite, nor Originally extendeth to the King, in his Natural Capacity.

The dependence of these two resteth upon the Reporters own words, who tells us, that *Protectio trahit Subjectionem, & Subjectio Protectionem*; Protection draws with it Subjection, and Subjection draws with it Protection, so as they are *Relata*, and do prove mutually one anothers Nature, *fol.* 5. *a.* And in the same Page (a few lines preceding) he shews why this Bond between King and Subject is called Legiance, because there is a reciprocal, and double Bond: for as the Subject is bound in Obedience to the King, so is the King bound to the Subject in protection: But the King is not Naturally bound to protect the people, because this Bond begins not at his Birth, but when the Crown settles upon him.

Thirdly, this Protection is not absolute, because the King must maintain the Laws, *fol.* 5. *a.* and the Laws do not protect absolutely, any man that is a breaker of the Laws.

Fourthly, This Protection is not Indefinite, because it can extend no further than his power, and his power no further than his Dominions, *fol.* 9. *b.* The like also may be instanced in continuance of time.

Lastly, the King's protection extendeth not originally to the Natural Capacity, but to the politick Capacity; therefore till a Foraigner cometh within the King's Legiance, he cometh not within his protection: And the usual words of a Writ of Protection shews, that the party protected must be in *Obsequio nostro*, *fol.* 8. *a.* The sum then is, that as protection of an English King, so neither is Legiance, or Subjection of an English-man Natural, Absolute, Indefinite, or terminated in the Natural Capacity of the King. And to make a full period to the point, and make the same more clear, I shall instance in one Precedent, that these times of *Edward* the Third produced. The former English Kings had Title to many Territories in *France*,

France, but *Edward* the Third had Title to all the Kingdom: And being possibly not so sensible of what he had in possession, as of what he had not; He enters *France* in such a way, and with that success, that in a little time he gains the highest seat therein, and so brought much honour to the English Nation; and more than stood with the safety of the Kingdom. For in the union of two Kingdoms, it's dangerous for the smaller, lest it be swallowed up by the greater.

This was foreseen by the English, who knew *England* did bear but a small proportion to *France*, and complained of that inconvenience; and thereupon a Law was made, that the people of *England* should not be subject to the King, or his Heirs, as Kings of *France:* which manifestly importeth, that an English King may put himself in such a posture, in which Legiance is not due to him; and that this posture is not only in Case of Opposition, but of diversity, when he is King of another Nation, and doth not *de facto*, for that Time, and Place, rule as an English King: which if so, I suppose this notion of Natural, Absolute, and Indefinite Legiance to the King in his Natural Capacity is out of this Kingdom, if not out of the World: and then the foot of the whole Account will be, that the Legiance of an English-man is Originally according to the Laws: The sum of all being comprehended in the joynt safety of the people of *England*. 14 *E.* 3. *Stat.* 4.

CHAP. IX.

Of Courts for Causes criminal, with their Laws.

THe great growth of Courts founded upon Prerogative, derogated much in these times from the Ancient Courts, that formerly had attained the Soveraignty over the people, and in the hearts of them all. This was a hard lesson for them to learn, but especially of the King's Bench, that was wont to learn of none; and yet must be content to part with many of their Plumes to deck the Chancellor, much of their work to busie the Prerogative Courts, holden *Coram Rege*; and more to those holden *Coram Populo*, I mean, *The Courts of Oyer and Terminer, Gaol-delivery, and Justices of Peace.* Those of *Oyer* and *Terminer*, were now grown very common, but less esteemed, as being by men of mean regard nominated for the most part by the party that sued out the Commission, which for the most part was done in behalf of those that were in danger, and meaned not to be justified by Works, but by Grace. These escapes, though small in the particulars, yet in the full sum made the matter so foul, as it became a common grievance, and a Rule thereupon set by the Parliament, for the regulating both of the Judges of such Court, and the Causes. The Commissions for Gaol-delivery likewise, grew more mean and ordinary: The chief sort of Men in the several Counties, had formerly the power, but were found to favour too much of Neighbourhood, and Alliance; the leading of the work therefore, is now committed to the Judges at *Westminster*, and the other made only Associates to them. But above all, the Courts of Sheriffs, Coroners, and Leets, were now grown sowr with Age, having attained courses by common practice, differing from Oppression only in Name; and yet were the times so unhappy, as by these courses they had obtained

2 *E.* 3. *c.* 2. & 7.

tained favour, and respect, amongst the great men, and so gained more power from above to abuse them below. These men loved to be Commissioners of *Oyer* and *Terminer*, and having learned how to make capital offences pecuniary, found such sweetness, as they used not to be weary of their places, though the Countrey grew weary of them; and therefore disliking uncertainties, in such matters of benefit, they cannot rest till they obtain more certain settlement in their places; some for years, others for life, and some for ever. The disease thus contracted by degrees, the cure must be accordingly: First the Sheriffwicks much dismembred to please the Court Favorites, and fill the King's privy purse, and all raised to the utmost peny of the full, and beyond the just value. A Law is made to restore the several Hundreds, and Wapentakes, to the Sheriffs and their Counties, and all of them are reduced to the old Rent; and it is likewise provided that none shall execute that place in County or Hundred, who shall not then have sufficient Lands in that County to answer damages for injustice by them done. And that no Sheriff shall serve in that place above one year; and then not to be chosen again for that service, till three years be past: which latter clause was only a *medium* taken up for the present occasion, in regard that men of ability became very rare in these times, especially, in some of the Counties. The election of the Sheriff is likewise not to be forgotten, for though the Counties had the election of Coroners in regard they looked that no man should come nigh their blood, but whom they trusted; yet the Sheriff came not so nigh their skin, nor yet so nigh their Free-holds, as anciently they had done, for that their power in judicature was much abated, and so not worthy of so high regard; yet in respect he was still to be a Minister of Justice, and his place valuable more than formerly, it was holden convenient that such as had the chief power of Judicature at *Westminster*, *Viz.* the Chancellour, Treasurer, Chief Baron, and the two chief Justices, should nominate the Man

4 *E.* 3. *c.* 12. & 15.

2 *E.* 3. *c.* 4.
4 *E* 3 *c.* 4.

1 *Rich.* 2. *c.* 11.

28 *E.* 3. *c.* 6.

14 *E.* 3. *c.* 7.

that should be their Servant, and ~~in~~ the Parliament never-
14 E. 3. n. 33. theless interposed in that Election as often as they saw cause.

Secondly, As touching Causes criminal, which more ordinarily come within the cognisance of these Courts: They generally held the same regard in the eye of the Law in these times that they had done formerly; nevertheless, in two crimes these times wrought diversly, urging the edge of Law against the one, and abating it as to the other. The latter of these is commonly called, *Petit Treason*, which is a murther destructive to the Common-wealth, in an inferiour degree, and at a further distance, because it is destructive to that Legiance, by which Families do consist, and of whom Kingdoms are derived.

Mirror Just. cap. 2 sect. 13 21 E. 3. *fol.* 17. *b* In former times it extended unto the Legiance between Lord and Tenant, and Parents and Children: but by this Law of 25 E. 3. it is reduced to the Legiance only of Man, and Wife, Master, and Servant, Clerk, and his Ordinary: the last of which was now lately taken up; and might have been as well laid aside, as divers others were, but that in these times much is to be yielded to the power of the Prelacy, who loved to raise the power of the Ordinary, to an extraordinary pitch, that themselves might be the more considerable.

This reducing of Treason into a narrower ground, made the Regiment of Felonies to swell: A hard thing it was in a Warring time, for Men to conceit themselves well drest, until they were compleatly Armed: Some used it for a Complement, and amongst others, honest men had as good cause to use it, as some that were ill affected, had a bad; and of the last sort, some did aim at private revenge, though many aimed against the publick quiet. But however the intentions of men thus harnessed might be different, the looks of them all are so sour, that it's hard to know a Man for peace, from a Man for War. And therefore the people were now so greedy after Peace, as they are ready to magnifie, or multiply all postures of Armed Men into the worst fashion, being well assured that the

the readieſt way to keep themſelves from the hurt of ſuch men, is to have none of them at all. But *Edward* the Third had more need of them than ſo, and will therefore allow Men to ride Armed, but not to Troop together, to rob, kill, or impriſon any Man; and if any perſon did otherwiſe, it ſhould be Felony, or Treſpaſs, but not high Treaſon. 25 *E.* 3. *c.* 2.

All this was in favour to the people, and yet it was not all; for when Mercy groweth profuſe, it becomes cruelty. Murther is very incident to times of War, yet is an Enemy to the Peace, of ſo high a Nature, that though the King's pardon may do much, yet both King and people declare it an impardonable crime, by the Common Law, and that the King's Prerogative ſhall not extend ſo far, as to pardon the ſame. This Juſtice done to the party dead, was a mercy to them that were alive; a means to ſave blood by blood-ſhed, and not ſo much by the King's grant, as by his Releaſe. One thing more in theſe caſes of blood, the people obtained of the King, which they had not ſo much by Releaſe, as by Grant, and that was the taking away of *Engliſhire*, an Ancient Badge of the Imperial power of the Danes over the Saxons, and which had either continued through the deſidiouſneſs of the Saxons, in the times of *Edward* the Confeſſor, unto the Normans time, or by them taken up again, and continued, until theſe times that *Edward* the Third was ſo far deſirous to declare his readineſs to maintain the Liberties of the people, as to be willing to reſtore them where they failed, and in particular took away the manner of preſentment of *Engliſhire*, blotting out the Title and Clauſe concerning it, out of the Articles of inquiry for the Judges *Itinerant*. And thus whether Native or Foraigner all men are now made in death equal, and one Law ſerves all alike. 14 *E.* 3 *cap.* 4.

Next unto blood, theſe times grew more ſenſible of Raviſhments, than former times had done: For though they had determined a ſevere penalty againſt ſo foul a Crime, and made it in the nature of a Felony capital, which was enough

enough to have ſcared any man from ſuch attempts, yet for the proof of the matter in Fact, much reſted upon the will of the Woman, which for the moſt part grounded upon ſelf-reſpects, and private prudence, laboured to conceal that which could not be made whole by revealing; and by after-conſent skin'd over the ſore as to themſelves, which corrupted inwardly, and endangered the whole body; to cure which, a Law is made to reſtrain ſuch late connivance in the Woman, by depriving her both of her Joyncture, and Inheritance, which otherwiſe had been ſaved to her by ſuch compliance, as after-conſent unto ſuch violations.

6 Rich. 2. c. 6.
5 E. 4. fol. 58.

CHAP. X.

Of the Courſe of Civil Juſtice, during theſe times.

HOwever the courſe of the Law concerning matters of the Crown, paſſed in a troubled Wave, yet in matters of Common Pleas, it paſſed in a calm and full Channel; as the Reports in Print do ſufficiently witneſs, nor was there any change of principles, but only ſome alteration tending to a clearer manifeſtation of the ſame. I will not touch upon every particular, but only upon two, which reflect ſomewhat upon the publick policy; the one touching the courſe of Inheritance in ſome particular Caſes; the other touching pleading in the Courts of Civil Juſtice.

The firſt of theſe was occaſioned from Conjuncture of Affairs, the Caſe being ſuch, that *Edward* the Third had now gotten himſelf a new Kingdom unto that of *England*, and muſt look to maintain that by power, which he obtained by force, and conducing thereunto, muſt have continual employment of the Engliſh in that Service, as being moſt truſty to his Cauſe. And that it is unreaſonable, that ſuch Engliſh as had devoted themſelves to his Service in this Cauſe, and in order there-

thereunto, had transported themselves, and their Families into those Foraign parts, should thereby loose the benefit of Leiges, in the Birth-right of their Children, born in those Foraign parts. Upon consideration had hereof, and of a former leading Opinion of the Lawyers and Parliament, a Declarative Law was made; *That all Children born without the King's Legiance, whose Father and Mother at the time of their Birth, shall be under the Faith and Legiance of the King of* England, *shall have the benefit of Inheritance within the same Legiance, as other Inheritors have.* These are the words of the Statute, and do occasion a double observation; one from the matter, the other from the manner of the Expression.

17 E. 3. n. 19.

25 E. 3 Stat. 2.

The Subject matter is so delivered, not as an Introduction of a new Law, but as a Declarative of the old, that lay more obscurely hidden, for want of occasion to reveal it, and the substance thereof resteth only in this, to enable the Children of English Natives, born beyond the Seas; not the Children of those that are of Foraign birth, though within the King's Territories in those parts, as the opinion hath been; nor doth any ancient Precedent or Case, warrant the same, as might be at large manifested, if it might conduce to the end of this discourse: and for the same cause, after this Statute; when as the Commons would have had a general Naturalizing of all Infants born beyond the Sea, within the King's Segniories; the same would not be granted, otherwise than according to the former Statute, and the Common Law.

42 E. 3. c. 10.

That which in the next place concerneth the manner of expression is this, That a Child is said to be born out of the King's Legiance, and yet the Father and Mother at the same time to be of the Faith and Legiance of the King of *England*: It seemeth to me, that it intendeth only those Children of English Parents, born within the King's Territories beyond the Seas, because the words ensuing, concerning Certification of Bastardy of such Children, are, that the same shall be made by the Bishop of such place upon the

King's Writ directed to him, which could never have paſſed into thoſe places that are not of the King's Territories: and ſo the Iſſue will be, that the Legiance of thoſe born in thoſe parts, though they are Leiges to the King, yet they are not of the Legiance of the King of *England*, but as Lord of that Territory.

The other matter to be obſerved concerning pleading in the Courts of Civil Juſtice, is this, That whereas anciently, from the Normans time, till theſe times, the pleadings were in the
36 E. 3 c. 15. Norman Tongue, they ſhall be henceforth in Engliſh; out of an inconvenience, I believe, rather ſuppoſed than felt: for though ſome kind of knowledge of Law-terms may be encreaſed thereby, yet unleſs that ſhall be profeſſedly ſtudied, it will breed nothing but Notions, and they an over-weening conceit, which many times ſets Men to Suits in Law, to their own loſs; like ſome weak influence of the Celeſtial Bodies, that are ſtrong enough to ſtir up humours, but not to expel them, or draw them out. However, even thus in part is the reproach of *Normandy* rolled away, like that of *Egypt* from the Iſraelites at Mount *Gilgal*.

CHAP. XI.

Of the Militia in theſe times.

WAr is ever terrible, but if juſt and well governed, Majeſtical; the one may excite reſiſtance and defence, but the other Conquers before blow given; becauſe it convinceth the judgement, and ſo prevails upon the Conſcience: For that heart can never be reſolute in its own defence, that is, at War with its own underſtanding; nor can ſuch a heart conſider ſuch a War, otherwiſe than as Divine, and bearing the face of an Ordinance of God; and then how can the Iſſue be unſucceſsful. It is no ſtrange thing

thing for Kings to miscarry in their Wars, because it's rarely seen that they are under good Council; but if a Christian Council miscarry, we may conclude it extraordinary in the efficient Cause, and no less wonderful in the issue, and end. Upon this ground, it concerneth a Christian Nation, not only in point of Honour, but of safety and continuance, to settle fundamental Laws for War against time of War; as of Peace in time of Peace. Neither was *England* deficient herein, saving that ancient times were more obscure in the particulars, and these days revealed them at such a time, wherein we may say, that *Edward* the Third approved himself not only King of *England*, but of himself, above the ordinary strain of expectation; for being now become a famous Commander and Conquerour, having also an Army inured to fight and overcome, and so might have given a Law; he nevertheless received the same, submitting both it and himself to the Directory of the Parliament in making a War with *France*, which was three to one against him in every respect, (but in the Title) besides the disadvantage from *Scotland* that lay continually beating upon his Rear. The like may be observed of his War with *Scotland*, in both which he evidently telleth the World, that he held it unreasonable to enter upon the managing of an offensive Foraign War without the concurrence of the common consent of the people; and that not onely for the thing it self, but also for his own Personal Engagement in the Service. For a King, though he be the *Generalissimo*, yet is he so from the people, and his Person being of that high value, is not to be exposed to every occasion that may provoke War, without due advice first had with the publick Council, because in his Person the people adventureth as well as himself. And in this manner were the Wars in *France* by *Edward* the Third, and in *Scotland*, concluded upon debate. In the next place, as touching the arrays of Men for War, I find no foot-steps of any power which was claimed as peculiar to the King therein, and acknowledged by the Parliament; but many

instances do I meet with in the opposite; all which do plainly tell us, that the old shifts of *Jurati* and *Obligati ad arma*, could do little either in the calling of men forth, or arming them for the War. But in case of publick defence against Foraigners, men were summoned upon their Legiance as anciently was used. And this was by both King and Parliament fully declared, and all such obligations by writing called in and damned as dishonourable to the King. In Foraign service the course was no less regular; if the War was by especial direction of the Parliament, they likewise ordered the manner of the raising of Souldiers, *Viz.* So many out of a County, and so many out of a Burrough, all which are by the expres words of the Statute said to be granted by the Knights and Burgesses. But if it was only upon the King's particular instigation and not by order or consent of the Parliament, the King in such cases being *Voluntier*, all the Souldiers were in like manner; unless some particular Law, or Tenure, otherwise obliged them. As touching the Arming of Soldiers, the Law was yet more certain and particular. If the Soldiers were men of Estate, they were armed according to the ancient rule, asserted by the Statute at *Winton*, or otherwise were especially assessed by the Parliament, or by vertue of their Tenures; the first of these is confirmed by *Edward* the Third in Parliament, wherein he willeth that no man shall be urged to arm himself otherwise than he was wont in the times of his Ancestors Kings of *England*. The two latter were likewise confirmed by another Law, made in the same King's time; whereby it was ordained that no Man shall be constrained to find Men of Arms, Hoblers, nor Archers, other than those which hold by such services, if it be not by common consent and grant made in Parliament. By men of Arms meaning those which we now call *Curiasseires*, or compleat armed; by Hoblers meaning those now called light Horse-men. The Archers served on Foot, and were principally armed with Bows, although they had also Swords or other such offensive portable Weapons.

13 *E.* 3. *n.* 15, 17, 18, 37, 38.
14 *E* 3. *n.* 14, 15, 16, 19, 42, 53.
20 *E.* 3. *n.* 14.
1 *E.* 3. *c.* 15.
4 *E.* 3. *c.* 5.
5 *E.* 3. *cap.* 5. *Stat.* 2.
25 *E.* 3 *Stat.* 5. *c.* 8.

The

The first of these concerneth only the arming of a Man's own person, the other the finding of Souldiers, and arming of them, and both together sufficient for the safe-guard of the Rights and Liberties of the People, invaded in those times, by Commissions of array; and such other expressions of Prerogative Royal; for as touching the arming of a Man's own Person, the Statute of 1 *Edward* 3. formerly mentioned, is clear in the point. And though the Statute of 25 *Edward* 3. doth not in the letter direct as touching the finding Arms for others, as is urged in his Majesty's Answer to the Declaration of the Parliament concerning the Commission of Array, *July*, 4. 1642. yet is it therein granted that a complete Soldier is within the Letter of the Statute; and seeing the person of the Soldier is not in the power of any private person in such cases to command him to the service, it seemeth clear to me that the Statute must intend the arming of him with compleat Arms, and not the armed person of the Man. The Soldiery thus arrayed, they are in the next place to be called by their Rendezvouz; the Knights by summons sent to the Sheriff, but the rest by Proclamation. If the Knights appear not, a fine is set upon them; if others run away from their conduct, a Writ issued to the Serjeant at Arms to apprehend them; if they were not arrayed, then the recognisances of such as undertook the work are estreated. All plunder or spoil committed by the Soldiers in their conduct, was to be satisfied by the Conductor, or Commander, that received their Pay, or Charges for their Conduct: And although the charges for Conduct had formerly, *De facto*, been defrayed sometimes by the County, by vertue of Commissions that issued forth, both for the raising and conducting of them; yet was this no rule, nor did *Edward* the Third claim any such duty, but disclaimed it, and ordained by Act of Parliament, that both the Pay and Conduct-Money should be disbursed by the King, from the time of their departure from their several Counties. For to this end (and for the safe-guard of the Realm, And for the

Fol. 418.

Pat Rot. 3 *E.* 3. *n.* 18. *Regist. fol.* 192. *a.*

4 *E.* 3. *cap* 5.

50 *E.* 3. *n* 62.

1 *E* 3. *c.* 7.

18 *E.* 3. *c.* 7.

the maintenance of the Wars of *Scotland*, *France*, and *Gascoign,*) The King had supply from Aids, Reliefs, Wardships, Marriages, Customs, and Escheats; nor did the Parliament grant any particular Aid by Assessment or publick Tax, but when they evidently saw the burthen of War, to be extraordinary; as it befel in the Conquest of so great and potent a Realm as *France* was: Wherein although the Taxes were many, yet so well ordered were they, and with that compliance from the King, that the people indured them with much patience, so long as the King lived. Lastly, in all these Cases of Foraign Wars (for of such Cases only these Laws are to be understood) it was especially provided, that no man should be distrained, or urged against his will, to go out of his County. But in Case of defensive War; the course was otherwise; for all Men in such Cases are bound by the Law of Nature, to defend their own Countrey from Invasion, in order to the safety of their own Estates and Habitations. They were arrayed, or gathered together by Commission of Array from the King, Armed according to the Laws formerly mentioned, and not by Arbitrary order of the Commissioners: And by vertue of such Commissions, they were drawn forth and led to places where need required. Sometimes to one Coast, sometimes to another, yet not altogether at the King's pleasure, for the Parliament upon occasion set rules of restriction, and generally exempted the North-parts beyond *Humber*, from being drawn South-ward, and left them as a reserve, for the defence of the Marches, bordering upon *Scotland*; and sometimes ordered, the Array should be executed only in some particular Counties, and other times wholly exempted the Countrey adjacent, within six miles of the Sea-Coast. And because the King might under colour of a defence Array the people, where no such occasion led the way, and command them out of their Counties, a Statute is made that states the Case wherein such Array shall be; the words whereof are variously set forth in the Books in Print, whether

14 *E.* 3. *Stat.* 2 *cap.* 1.

1 *E.* 3. *Stat.* 2. *cap.* 5.

13 *E.* 3. *n* 18.

20 *E.* 3. *n.* 14.

1 *E.* 3. *Stat.* 2 *cap.* 5.

whether determinatively, or carelesly, I cannot tell, but all of them do differ in sence one from another, and from the Truth; some of the common Books have the words thus: *None shall be distrained to go out of their Counties, unless for cause of necessity, and of sudden coming of Strangers, or Enemies, into the Kingdom*: Others read it thus, *But where necessity requireth, and the coming of strange Enemies into the Kingdom.* The King's Answer to the Parliaments Declaration, concerning the Commission of Array, would read it thus, *Unless in case of Necessity, or of sudden coming of strange Enemies, &c.* But the words in the Roll are these; *Et que nulls ne soient distresses d'aller hors de les Countees, Si non pur Cause de necessity, de suddaine venue des Stranges Enemies, en Reaulme*; In English thus, word for word: *And that none be distrained to go out of the Counties, if not for cause of Necessity, of sudden coming of strange Enemies into, or in the Kingdom:* which words determine the point, That none shall be by Commission of Array drawn out of their County, but in case of Necessity: And secondly, that this Case of Necessity, is only the coming of strange Enemies into, or in the Kingdom, so as probably the Invasion must be Actual before they be drawn out of their Counties, and not only feared; and it must be a sudden Invasion, and not of publick note, and common fame foregoing, for then the ordinary course either of Parliament, or otherwise, must be used to call those that are bound by Statute, or Tenures, or Voluntiers to that service, seeing every Invasion is not so fatal, as to require a Commission for a General Array. Against what hath been thus noted, the judgement of Sir *Edward Coke* in *Calvin*'s Case lies yet in the way, who affirmeth, that the Subjects of *England* are bound by their Legiance to go with the King in his Wars, as well within the Realm, as without; and this Legiance he telleth us, is that Natural Legiance which he saith, is Absolute and Indefinite, *&c.* and not Local; which if not so, then were not the English bound to go out of *England*; an inference that is neither necessary, nor is the thing affirmed certain. It is not necessary, because

Fol. 422.

Fol. 7. *b.*

English-

English-men may be bound to go out of *England*, by vertue of their Tenures, particular Contract, or else by special Act of Parliament, and not by vertue of that Natural Legiance, which in truth is no where.

Now for the maintenance of the point, the Reporter alledgeth two Statutes affirming the thing, and Common practice; and lastly, Authorities of the Judges of the Common Law. As touching the Statutes, one in *Henry* the Seventh's time, and the other in *Edward* the Sixth's time: I shall speak of them in the succeeding times, when we come at them, for they are no Warrant of the Law, in these times whereof we now treat; much less is the modern practice of these latter days, a Demonstration of the Law in the times of *Edward* the Third, nor of the Nature of the Law in any time, seeing that it is obvious to times, as well as particular persons, to do and suffer things to be done, which ought not so to be; and therefore I shall for the present lay those two Considerations aside. But as touching the Opinions of the Judges of the Common Law, two Cases are cited in the Affirmative, which seem in the Negative, and the rest conclude not to the point.

11 *H.7. cap* 1. 2 *E.6. c.2.*

The first of the two Cases, is the opinion of Justice *Thirning* in the time of *Henry* the Fourth, word for word thus: *A Protection lies for the Defendant in a Writ, upon the Statute of Labourers, and yet the Defendant shall not have such matter by way of Plea*, Viz. *That the King hath retained him to go beyond the Sea: for the King cannot compel a Man to go out of the Kingdom*, That is (as the Reporter saith) *Not without Wages*; intimating thereby, that if the King shall tender Wages to any Man, he must go whither the King shall please to send him, which is not only destructive to the opinion of *Thirning* concerning the plea, but also (though granted) is destructive to the Reporter's Judgement in the main point: For if an English-man may refuse to go without Wages, then is he not bound to go by any natural absolute Legiance, as the Reporter would have it. And as touching the second Case, which is *Bigot*'s and *Bohun*'s Case, it cleareth the same

7 *Hen.* 4. *Protect.* 100.

ſame thing; for it was reſolved, that they ought to go but in manner and form, according to the Statutes, then is not the ground in the abſolute Legiance, for that is not qualified, but in the poſitive Statute-Law, which tieth only in manner and form, and that by voluntary conſent in Parliament.

The reſt of the Caſes, do neither conclude the main point, nor the particular thing that the Reporter intendeth: for he would imply to the Reader, that Engliſh-men were anciently uſed to be impreſted for the Wars in *France*: and hereunto he voucheth one Authority out of ancient Reports of Law, in *Edward* the Third's time, one Authority in the time of *Henry* the Fourth, and three in the time of *Henry* the Sixth; none of all which do ſpeak one word concerning impreſting, and that in *Edward* the Third, doth imply the contrary; for the Caſe is, that in a *Præcipe quod reddat*, a protection was offered by the Defendant, as appointed to go beyond Sea with the Duke of *Lancaſter*; and the Plaintiff's Council alledged that the Defendant had been beyond Sea, with the Duke, and was returned: To this the Defendant's Council anſwered, that the Duke was ready to return again; and for this cauſe the protection was allowed: Yet a *Quere* is made upon this ground, that it might be that the Defendant would not go over with him, nor was it proved that he would, which ſheweth plainly, the party was not impreſted, for then the thing had not been in his power to will or nill.

44 *E. 4 fol. 12.* 12 *H. 4. 7.* 32 *H. 6. fol. 4.* 17 *H. 6. Prot.* 19 *H. 6. 35.*

The laſt inſtance that the Reporter produceth, is that of *Forinſecum Servitium*, or Foraign Service, and that ſeemeth to be Knight-ſervice to be performed abroad: But this falleth ſhort of the Reporter's intention in three reſpects.

Firſt, Though it belongeth to the King, yet not to him only, but to other chief Lords, ſo ſaith *Bracton.*

Secondly, It is not due from every Engliſh-man:

And laſtly, It is a Service due by vertue of Tenure, and then the Concluſion will be, That which is due by Tenure of Lands, is not due by natural and abſolute Legiance: and

Bract. li. 2. fol. 36. & 37.

ſo this Foraign Service, ariſing meerly by compact, and agreement between Lord and Tenant, and not by the natural duty of an Engliſh-born Subject, (which is the thing that the Reporter driveth at in all this diſcourſe) will be ſo far from maintaining the Reporter's opinion, as it will evidently deſtroy the ſame.

And thus the poſture of this Nation, in the Field remaineth regular in the rule, whatever hath been ſaid againſt it; notwithſtanding, that in the very inſtant of Action, there may be ſome irregularity, which no doubt both was, and ever will be, in ſtormy times; nor did it conquer the Law: For though War may ſeem to be but a ſickneſs of the State, yet being in Truth, as the *Ultimum refugium*, and only reſerve unto Law, beaten to a retreat by oppreſſion: It is no wonder if this motion, or rather commotion that brings on the Law of peace in the Rear, be ſtill and ever ſubject to a rule of Law, how unruly ſoever it ſelf ſeemeth to be. Now becauſe Law imports execution, and that preſuppoſes a Trial, and it a Court; therefore did our Anceſtors (amongſt other Courts not regulated by the Common Law) form a Court for the Service of War, called the Court Martial, or the Conſtables Court, according as the Office of one or the other, had the preheminence. The proceedings herein, were ordered as I ſaid, not according to the Common Law, for that is like the Land, much diſtant from all other Nations, and the negotiation of this Iſland with other Nations, (as in time of Peace, ſo of War,) requise a rule common to all thoſe Nations, or otherwiſe no negotiation can be maintained: And for this cauſe, the proceedings in this Court were ever according to the rule of the Civil Law: The work of this Court is principally judicial, and in ſome Caſes Miniſterial.

The firſt reflects upon cauſes Foraign and Domeſtick, and both of thoſe are either Criminal, and ſuch as concern the common Peace of the place of War, or more civil, relating only unto private intereſt. As touching the firſt of theſe, I ſuppoſe it is no Bull, to ſpeak of a Common peace in the place

place of War; for a common peace must be in each party within it self, or otherwise no party at private variance can subsist within it self, much less make War with the other; and therefore in order unto War, there must be a Law of Peace, for the Trial of Offenders, and punishing them for offences committed against the good Government of the War, such as are breaking of Ranks, deserting the Standard, running away from the Colours, Mutinies, Murthers, Rapes, Plunderings, private quarrels, disobedience to command, and such like, all which do bear the shew of Crimes against the Common Peace of the Army, and the Countrey.

Of the second sort, are matters concerning Quarter, and Contracts in order to the government of the War, saving such as are made before either part be Inrolled for the War: For if a Man doth covenant to serve in the War, and keepeth not his day at the first Rendezvouz, he is to be attached by Writ at the Common Law. Causes Domestical likewise fall under the like division: for whatsoever Cause may be Foraign, may also be Domestick; because the Army is ever imbodied within the Kingdom, and must be under the Directory of the Martial-Law, upon the first forming thereof. Now though the particular Laws of the Army, for the government thereof, be ordinarily according to the prudence of the General, yet certain Fundamentals have been *ab Antiquo*, made by Custom, and the Parliament, against which the course of Judicature must not go; and as the Parliament saw need, it set also particular Directions, as for the payment of Soldiers wages, for remedy of wastings and plunderings in their own Countrey, and other such Emergencies. But the execution of all these Laws Originally was in the Martial of the Army, and because that the Army was generally dissolved, or such persons engaged in such matters of Controversie departed from the Army before the same were concluded; Therefore the Marshals-Court continued in order to the determining of these matters; and in continuance of time, other matters also crowded into that Society, although sometimes under the Directory

13 *Rich.* 2. *Stat.* 1. *cap* 20. 8 *Rich.* 2. *n.* 32. 8 *Rich.* 2. c. 5. *Regist. fol.* 191. 2.

50 *E.* 3. *n.* 33. *n.* 161. 3 *R.* 2. *n.* 27.

of the Conſtable of *England*, as well as at other times under the Marſhal; more particularly, that power of determining matters concerning Torniament, a ſport that like a Sarcaſm tickles the fancy, but wounds the heart, and being of as little uſe in a Common-Wealth, as of benefit; therefore is laid aſide, nor need I to ſpeak any more concerning it. There is one thing more, ſomewhat like a Torniament, but that it is in good earneſt, and that is called Duel. This cometh likewiſe within the Cogniſance of this Court, but in a Miniſterial way, and as ſubſervient to the Common Law, in Caſes of Appeal and Right: Hereof needs likewiſe little more than the naming, and therefore, I ſhall leave the Reader that would underſtand the particular managing thereof, unto the diſcourſe compiled by the Duke of *Glocester*, in *Richard* the Second's time.

Gloſſ. 129.

Laſtly, As touching the Antiquity of this Court, though it may be great, yet the power thereof was doubtful, and ſcarce taken notice of in any publick Act of State, till about theſe times; when as a complaint was made by the Commons, for the encroachment of that Court upon the liberty of the people, and bounds of the Courts of Common Law; Nor is it ſtrange that ſuch unquiet times brought forth ſuch Precedents, but much more ſtrange that the Common Law held up its head againſt ſuch violent irruptions of War.

CHAP. XII.

Of the Peace.

YOu have ſeen the Kingdom in Armour, now ſee it in Robes, and you will ſay that its Majeſty therein is as grave, as it was in the other brave. It's true, the tempers are ſo contrary, as it may be wondred how one and the ſame ſhould be wiſe and willing for both: but when God will do

do much, he gives much, and can make a people as one Man, like unto *Caleb* fitted both for War and Peace: Besides, the times were now much conducing hereto, it's vain to endeavour to allay humours in the body, which are maintained by Agitation, they must be purged out, or the whole will still be endangered: and therefore although Kings hitherto did endeavour to establish a peaceable Government, yet being led by ill Principles of private Interests, they laboured to little purpose: but now the Scene is altered, and one wise moderate King, that was as wise as valiant, did more than they all: And first set a rule upon his own desires, contenting himself with the condition of an English King; and then upon his people, making them contented with the condition of English men.

The order herein was no less observable; for the former wrangling times having trained up the minds of men in a tumultuous way, nor could they skill to pace in the steps of peace, the King led them into Foraign parts to spend their heat, till being either weak or weary, they are contented to return home, and study the happiness of a quiet life: these men thus ordered, the rest at home are made more cool, like a body after Physick, and all are now contented to submit to Law and Magistracy. A fitting time now it was for Justices of Peace to come upon the Stage in their best garb: For though the work was more ancient, yet like some loose notes laid aside in several places, it was not to be found, but at a distance, and after long delay. But *Edward* the Third sums up all into one brief, and brings a complete model thereof into the World for future Ages to accomplish, as occasion should lead the way. The course was now established to have Justices settled in every County, there to be resident and attending that Service. First, they were named Guardians, or Wardens of the Peace, but within a few years altered their Title to Justices. First, they were chosen out of the good and lawful men of each County: After that they were two or three chosen out of the worthyest Men, and these were to be joyned with Lawyers. Then was one Lord and

1 *E.* 3 *cap.* 16.
1 *E.* 3. *n* 5.
17 *E.* 3. *n.m.*
1 *E.* 3. *cap.* 6.
18 *E.* 3. *cap.* 2.

and three or four in each County of the most worthy men,
34 E. 3 c. 1. adjoyned with Lawyers. Afterward in *Richard* the Second's time, the number of Justices in each County might attain to
12 R. 2. c. 10. the number of six, and no Steward of any Lord to be admitted into the Commission; but within half a year all is at large, so be it that the choice be out of the most sufficient Knights, Esquires, and Gentlemen of the County. Again, within two
14 R. 2. c. 12. years, the number in each County is set at eight, yet in all these, the Judges and Serjeants were not reckoned, so as the work then seemeth not so much as now a days, although it was much of the same kind; and yet it grew up into that greatness which it had by degrees. Before they were settled by *Edward* the Third, there were *Custodes pacis*, which might be those whom we now a days call the High-Constable of the Hundred, whose work was purely Ministerial.

Afterward about the second year of *Edward* the Third, the Guardians of the peace had power of *Oyer* and *Terminer*, in
2 E. 3. c. 3. matters of riding armed upon the Statute 2 *Ed.* 3. After that,
4 E. 3. c. 2. they have power of enquiry by Indictment in certain Cases,
8 E. 3. n. 67. within four years after they have power of *Oyer* and *Terminer*
18 E. 3. c. 2. in Cases of false Jurors, and maintenance: and about ten years
17 R. 2. c. 10. after that, they obtained like power in matters of Felony and Trespass. The way of Commissions in case of life and member thus opened; another occasion of Commission offers it self for a determinative power, in case of offences against the Sta-
25 E. 3. tute of Labourers, and the Cognisance hereof is soon settled
Stat. 1. c. 7. upon Commissioners in the Counties specially chosen for that
34 E. 3. c. 11. Service, which questionless as the times then stood, was as commendable work as it was necessary: For Soldiers were so many that Labourers were very few; and those that once are accustomed to Arms think ever after meanly of the Handicraft; nor will they ever stoop thereto after their Spirits are once elevated by Mastery of Adventures. And secondly, those few Labourers that remained of the Sword, Plague, and other disasters of these wasting times, understood their advantage, and set a value upon their labours far above their merit, appre-

prehending that Men would rather part with too much of a little, than to let their work lie ſtill, that muſt bring them in all they have; but theſe Commiſſioners laſted not long, though the work did: The Juſtices of Peace are looked upon as meet for that ſervice, and it's a vain thing to multiply Commiſſions where the work may be done by one, that before this time had obtained an additional Cogniſance of all Cauſes of Riots, Batteries, wandring dangerous perſons, and offences in Weights and Meaſures, and in Purveyance. To them, I ſay, all this work concerning Labourers is alſo committed by the Parliament; and herewith a way was laid open for Crimes of greateſt regard under Felony to be determined by Trial in the Countrey according to the courſe of Common Law. The iſſue of all which was not only eaſe to the people, but a great eſcape from the rigour of the Council-Table in the Star-Chamber and the King's-Bench at *Weſtminſter* on the one ſide, and alſo from the gripe of the Clergy on the other; who hitherto held the Cogniſance of the Markets in Weights and Meaſures to themſelves. This model ſo pleaſed all men, that *Richard* the Second, that was pleaſed with nothing but his own pleaſure, gave unto the Juſtices of Peace yet further power to execute the Statute at *Northampton* againſt riotous ridings, and to ſettle the wages of Labourers and Servants, to puniſh unlawful Huntings by the meaner ſort of people, and regrators of Wool, falſe Weights in the Staple, unlawful wearing of Liveries, and unlawful fiſhings, contrary to the Statute at *Weſtminſter*, 2. Thus was the power of Juſtices of the Peace grown to that heighth in theſe and other things, that it undermined, not only the Council-Table and King's-Bench, but the Commiſſions of Gaol-delivery, and of *Oyer* and *Terminer*, ſo far forth as their work was much leſs than formerly, for Neighbours in caſes of Crime are better truſted with the lives and eſtates of men, than ſtrangers, ſo as in all this the people are ſtill the gainers.

42 *E.* 3. *c.* 6.

34 *E.* 3. *c.* 5, 6.

14 *Rich.* 2. *c.* 12.

13 *Rich.* 2 *c.* 8. *cap.* 13.

14 *Rich.* 2. *c.* 4. 16 *Rich.* 2. *c.* 4. 17 *Rich.* 2. *c.* 9.

The manner of Judicature by theſe Juſtices of the Peace ſtill remains: nothing appears by any Statute in theſe times, that one

15 *Rich.* 2. c. 2. one Justice of the Peace might do alone, but record a forcible detainer, although questionless in point of present security of the peace and good behaviour by the intent of the Statutes, he might do many things, but in Cases of *Oyer* and *Terminer*, all must be done in publick Sessions, which the Justices of the Peace had power to hold by Commission only, until the thirty sixth year of *Edward* the Third, and ever after that they held their
34 *E.* 3. c. 1. Sessions by virtue of the Statutes, and had power to determine
18 *R.* 2. c. 4. divers things in their Sessions according to discretion. These were remedies after the Fact, now see what preventing Physick these times afforded.

One thing that much irritated the spirits of men into discontents was false news or slanderous reports raised and spread amongst the great men: For in these times the Lords were of such a considerable power as the vexation of one Lord, proved the vexation of a multitude of the meaner sort; and though the Statute of *Westminster* the 1. formerly had provided against such Tales, yet it touched only such as concerned discord between the King and people, although by implication also it might be construed to extend further. But *Richard* the Second,
2 *R.* 2. c. 6. willing to live in quiet, that he might enjoy his pleasure, would have the people know their duties in plain words, and agreed
12 *R.* 2. c. 11. to a Law, that all such as published such false news, tending to sow strife between the great Men, should be imprisoned until the first mover was found, and if he were not found, then the Relator should be punished by advice of the Council: So much power was then given to the Council, what ever it was.

Thus the seed was choked, or was so intended to be, though every passion was not thus suppressed: For some angers conquer all fear, and will hold possession, come what will: In the next place therefore, provision is made against the first Actings in sorting of parties by tokens and liveries; utterly inhibiting the meaner sort of the people from giving of Liveries to
1 *R.* 2. c. 7. maintain quarrels, upon pain of Fine and Imprisonment, and the Trial to be before the Justices of Assize, which it seems was in affirmance of former Laws, as by the preamble of the Statute

tute doth appear, though the Laws themselves are not extant. About fifteen years after, it was by sad experience found, that the Lords maintained quarrels by multitude of Liveries, and therefore another Law was made inhibiting the Lords to give Liveries to any but their menial Servants; and it's ordered, that the Justices of the Peace shall make enquiry of such offences, and punish them according to their discretion. 16 R. 2. cap. 4.

A third prevention was provided against gathering together of parties after they are sorted. For the humours may so abound, as nothing will keep them in; they must either break out into a sore, or a long sickness of State will certainly follow. To this end therefore, the Statute made at *Northampton* is again revived, expressly forbidding all persons to ride Armed, unless in some particular Cases of executing Justice, or guarding the person of the King, or his Justices, and such like: And if men will be so adventurous, as to out-dare Law, by publick force, Troopings together, and riotous Ridings, Another course is taken, not by Commission of the Peace, but rather of War, directed unto valiant persons in every County, and they have power thereby to apprehend such Offenders, and imprison them until the Gaol-delivery, though no Indictment be found thereof until the Gaol-delivery shall be. By this Commission therefore power is given of *Posse Comitatus*, in nature of a Commission of Array, with an Additional power of fighting and destroying, so as though the King granteth the Power by the Commission, yet the Parliament giveth the power to the Commission; and be it a Commission for Peace or War, it is Originally from that power. 2 E. 3. c. 3. 7 R. 2. c. 13. 20 R. 2. c. 1

The fourth and last prevention, was the taking away means of continuance and supporting such Riotous ways, *Viz. Castles and Gaols out of the Custody of private hands, and restoring them to their Counties*: For Gaols and Castles are taken promiscuously for places of security, in times of peace to keep ill persons from going out, and in times of War from getting in: Amongst these, some belonged to the King, and were committed to such as he favoured, who commonly (in such times of Oppression and Violence) grew too big 13 R. 2. c. 1.

for Juſtice, uſurping a Gaol-delivery, and making ſuch places of ſtrength many times, even to the innocent, a Priſon to keep them from the Law, but unto guilty perſons an *Aſylum* to defend them againſt the Law. And theſe thus belonging to the King were under no Law, but of Prerogative, whereas other Caſtles of private perſons were under the yoke of the Statute, 13 E. 1. For remedy of all which, the King's Caſtles are once more returned to the Sheriff's Cuſtody by Act of Parliament; who queſtionleſs hath the power to diſpoſe of all places of ſtrength, whether in order to Peace, or War, and could not diſpoſe them into a more ſafe and indifferent hand than the Sheriff's; who is as well the King's Officer, as the Kingdoms Servant, and much intruſted by the Law in the execution of its own power. And thus is this Nation now prepared for a ſettled peace, a Condition that is long in ripening, and ſoon rotten, unleſs it be well ſerced, and over-awed by a good Conſcience: But *Richard* the Second was neither ſo good, nor ſo happy; his Heart affected to be high, but his Head could not bear it; he turns giddy, and runs far wide: Thoſe that would reduce him, he enforces into Foraign Countreys; and himſelf holds on his carere over hedge and ditch into *Ireland*, where under pretenſion of holding poſſeſſion of that Kingdom, he loſt *England*, and whilſt he plays his game in that Countrey, another plays King, by your leave, in this, and ſteps into the Throne; teaching the King thereby this Leſſon, though too late; *That Non-reſidency is dangerous for a Prieſt, but unto a Prince fatal, unleſs his Subjects be faſt to him, when he is looſe to them.*

CHAP.

CHAP. XIII.

A View of the Summary Courſes of Henry *the Fourth*, Henry *the Fifth*, *and* Henry *the Sixth*, *in their ſeveral Reigns.*

HE that played this prank was the baniſhed Duke of *Hereford*, Son of *John* of *Gaunt*, and by his Death, now become Duke of *Lancaſter* by Title, and as the times then were, it proved not hard to get more: For in uncertain Common-Wealths, it is an eaſie thing for a man of opinion, that hath leſs than his due, to get more than he ought. As Son of *John* of *Gaunt*, this Duke had the peoples good wiſhes; he (a wiſe and a brave Man, and under oppreſſion) gained the more upon the people, by how much they love brave men, and compaſſionate ſuch as ſuffer wrong, eſpecially from ſuch perſons, from whom they all found the like meaſure. All theſe concurring with the King's abſence, invited the Duke to adventure himſelf upon the influence of the peoples favour, to gain his own right, and what more the people would allow him; and if no more, yet his Honour is ſaved, he came for his own, and attained his end.

Thus then he comes over, without Army, or Foraign power, or other help, ſaving the advice and intereſt of Arch-Biſhop *Arundel*, who was his Companion in ſuffering, Partner in the Cauſe, and no leſs welcome to the Clergy, than the Duke himſelf was to the people; and ſo gained power to the Duke, though he brought none. Upon their Arrival the aſpects of all are benign; the Dukedom waits for him,

and in that, as in a mirrour he beholds the way fair and easie: yet further, it pities him to see the Kingdom so torn in pieces and spoiled: The people knew him able, and hoped him willing to amend all; they offered him their service, which he accepts, and therewith the Crown: so hard a thing it is for to put a stop to a Conquerour in his carere.

By this time was the Duke of *Hereford* thus become Duke of *Lancaster*, and King of *England*, under the name of *Henry* the Fourth, by a design, that in the proof was more easie than commendable: and which being effected cost more skill to make that seem fair, which was so foul, than to accomplish the thing. He therefore first heaps together Titles, enough to have buried the clamour of Usurpation, if it would have succeeded. Conquest was a Title freest from dispute, whilst power holds; but it looks better from a Forraign Enemy, than one sworn to the English Crown; and therefore after that had served his turn, he disclaimed it, as that which was, though meet enough to have, yet unmeet to hold.

His right by Designation from his Predecessor, he glanced upon, but durst not adventure it too deep into the peoples consideration, whose Ancestors had formerly over-ruled the Case against King *John*. He then stayed upon a concealed Title, from a concealed Son of *Henry* the Third, of whom they who lifted might be perswaded; but few believed the thing, nor did himself, but thence takes his flight up to a *Jus Divinum*, or some hidden Fate that called him to the work; but even there his wings failed him, and so he falls flat upon the peoples Election, *De bene esse*. Some of these, or all together might make Title enough for a great Man that resolved to hold by hook, what he had got by crook; and therefore trussing them up all together, he enters his claim to the Crown, *As coming from the Blood-Royal from King* Henry, *and through the Right that God his Grace hath sent me; with the help of my Kin, and Friends, to recover the fame, which was in point to be undone, for want of good Governance, and due Justice:* The extract of all, is, that he was chosen by

by the people and Parliament then ſitting: And albeit that by the Reſignation of *Richard* the Second, the Parliament might ſeem, in ſtrict conſtruction of Law, to be expired, together with the King's power who called them together, yet did not that Parliament ſo apprehend the matter, but proceeded not only to definitive Sentence of Depoſing him, but declared themſelves by their Commiſſaries, to be the three States, and Repreſentative of the people of *England*, maintaining thereby their ſubſiſtency by the Conſiſtence of the Members together, although their Chief was for the preſent like a head in a trance, till they had choſen *Henry* the Fourth to ſucceed in the Throne, by this means preventing the conceit of diſcontinuance in the very Bud of the Notion.

Much like his entry was his continuance, a continual tide of Foraign and Domeſtick War and Conſpiracy, enough to exerciſe his great Courage, although he was more Wiſe than Warlike, being loth to take up Arms; (for well he knew, that a ſick Title never ſleeps but in a Bed of Peace) and more loth to lay them down; for beſides Victory, whereby he gained upon his Enemies in time of War, he knew how to make advantage of them in time of Peace, to ſecure his Friends, to keep others in awe, to enforce ſuch Laws as ſtood with reaſon of State, and the preſent poſture of Affairs, and where Laws failed, to fill up the period with Dictates of his own Will. And upon this Account the Product was a Government full of Ulcers, of Blood-ſhed, without regard of Perſons, whether of the Lay, or Religious Order, without Legal Trial, or privilege of Clerk. So was Arch-Biſhop *Walden* Dethroned, Arch-Biſhop *Scroop* put to death, and Dukes were diſmounted without Conviction, or Imputation, ſaving of the King's diſpleaſure: Taxes multiplyed, although begotten they were upon the Parliament, like ſome monſtrous Births ſhewn to the World, to let it know what could be done; but concealed by Hiſtorians, to let it know what may not be done. Yea, the privileges of Parliament invaded in point of Election: A thing that *Walſing.*

roſe

none of his Predeceſſors ever exemplified to him, nor none of his Succeſſors ever Imitated him in; nor had he purpoſed it, but that he was loth the people ſhould know more of the Government than needs muſt.

To keep off Foraign troubles, he made Peace with *France* for longer time than he lived; yet was ever infeſted with the Sword of Saint *Paul* in behalf of *Richard* the Second's Queen, and with the Factions between the Houſes of *Orleance* and *Burgundy*, in which he had intereſted himſelf to preſerve the Foraign Neighbour-hood in Parties one againſt another, that himſelf might attend his own ſecurity at home. He would have moved the Scots, but they were already under Engliſh Banners; nor could he reach ſo far, having ſo many enemies even in his own boſom. The Welſh were big with Antiquity, and Mountains of Defence; they begin to bethink themſelves of their Ancient Principality, hold the King's Arms at hard Duty, till by Laws Enacted in Parliament, they loſt
2 *H.4.cap.12.* 4 *H.4.cap.26,* 32 & *cap.19,* 20, 28, 31. their Liberties of bearing Office Miniſterial, or of Judicature, of holding Caſtle, of Convention without the King's Licenſe, yea, of Purchaſe; and by degrees were brought down from the height of a Free Principality to be ſtarved in their power, and inferiour to a Free people. And thus the Welſh on the one ſide, the diſcontented Lords on the other, and *Mortimar*'s Title in all, ſo buſied the King, as though he lopped off the Tops as they ſprang up, yet they ſprang forth as they were lopped; nor was it the King's lot all this while to find out the root of All, or to ſtrike at that.

Laſtly, when time had made all troublers weary, yet he ſtill ſits upon Thorns; he was jealous of his Subjects, jealous of his Son, yea jealous of himſelf. It being ever the firſt and laſt of his thoughts, how to keep his Crown. For the moſt part of his Reign, he was troubled with the walking Ghoſt of *Richard* the Second; ever and anon he was alive, he was here, he was there, and ſo the peoples minds were always kept at random; but when all theſe Spirits

Spirits are conjured down, *Richard* the Second's Ghost is yet within *Henry*'s own breast. So ruled *Henry* the Fourth, an unhappy confident man, that durst undertake more than he would, did more than he ought, was successful in what he did, yet never attained his end; to be sure of his Crown, and quiet of mind. For a plaister to this sore, he turned somewhat towards Religion; but shewed it more in Zeal to Church-men, than in works of Piety; and therefore may be thought to regard them, rather as his best Friends in right of Arch-Bishop *Arundel*, than as in relation to Religion; yet as if he overlooked that, he desires their prayers, becomes a strict observer of superstitious rites, is fiery Zealous against the Lollards, intends a journey into the Holy Land, and War against the Infidels, (the common Physick of guilty Kings in those days.) Briefly, he did will to do any thing but undo what he had done; and had done more, had his journey to the Holy Land succeeded; but (whether hastned or delayed, by a Prophecy of the ending of his days, falls not within my Pen to censure:) entring upon the work he died; in the beginning of his purposes, in the midst of his fears, never came to the Holy Land, and yet yielded up his last breath in *Jerusalem*.

Hist. Eccles. Ang. cent.

THe Parliament was then sitting, and was witness of the death of *Henry* the Fourth, as it had been of his entrance upon the Throne, as if purposed to see the course of the Crown, in the doubtful currant between the two Houses of *Lancaster* and *York*, and to maintain their own honour in directing the Scepter according to their warranty upon a late Intail by Act of Parliament; yet did not all rest upon this; for the Heir of *Henry* the Fourth was a Man every inch of him, and meant not to Moot upon the point: His Father died a King, and he his Heir; had the Crown, and was resolved to hold it: A rough young Man he had been formerly, and bold enough to out-face small doubts in point of succession, for he could (for a need) out-face common

Henry the Fifth.

common civility it ſelf. This might have lien in his way, for he that cannot govern himſelf, can much leſs govern a Kingdom: Yet a hidden providence concluded quite contrary, and rendred him a clear Teſtimony of a ſtrange change by the anointing Oyl, like that of *Saul* that forthwith had the Spirit of another Man: So though not hammered thereto by affliction, as was *Edward* the Firſt; yet was he his parallel in Government and ſuperiour in ſucceſs. Being ſeated in the Throne, all Men thought it dangerous to abide the adventure of the Turn of this King's Spirit. The Clergy had but yeſterday tryed the Maſtery with the Laity, and gained it but by one Vote; there was no dealing with the Clergy, whilſt Arch-Biſhop *Arundel* lived, nor with him whilſt *Henry* the Fourth lived, or his merits were in memory; but now they both are dead, the Clergy and the Laity are upon even ground; this might make the Clergy now not over confident: The Lords looked on the King as a Man like enough to ſtrike him that ſtands next: The wiſe Men ſaw he would be doing; all Men were tired with inteſtine quarrels; and jumped in one, that he that would be in action ſhould act abroad, where he might get renown, and a purchaſe big enough for his Spirit. *Scotland* was a Kingdom yet incompetent to the King's Appetite. *France* was the fairer mark and better game, and though too big for the Engliſh gripe, yet the Eagle ſtooped, and ſped himſelf ſo well, as within ſix years he faſtned upon the Sword and Scepter, and a Daughter of *France*, and might have ſeiſed the Crown; but choſe to ſuffer a blurr to lye upon his Title derived from *Edward* the Third, rather than to incurr the cenſure of Arrogancy over a ſtooping Enemy; or to pluck the fruit from the Tree before it was fully ripe; which in time would fall into his Lap, by a better Law than that of the Sword; otherwiſe it might be well conceited, that he that hath both Right and Power, and will not ſeiſe, diſclaims. Beſides the King was as well Inheritor to his Father's Fate as Crown: ſtill he had ſucceſs, but the end was ſo far diſtant, that he died in the way thereto. The brave *Dauphinè* of *France* maintaining War (after his Father, the

the French King had yielded up the Bucklers to *Henry* the Fifth) till *Henry* the Fifth died, and the Engliſh did forego what they had formerly gotten in *France*, by the Sword of that great Commander. Nor did the Engliſh gain any thing in the concluſion of this War, but an honourable windy repute, of being one of the five Chief Nations of Chriſtendom, (if honour it be to be reputed amongſt the Nations) a Conquerour of *France*; the chief Leader unto the dethroning of three Popes at once, the Election of Pope *Martin*, and of giving a cure to that deadly wound of the Popedom, which had ſpent the blood of two hundred thouſand Mens lives loſt in that quarrel.

Theſe Foraign Engagements made the King leſs ſolicitous of the point of Prerogative at home; and the rather, becauſe he knew the way to conquer his private Enemies arms, and his Subjects hearts; without loſs of honour in the one, or reverence in the other. He loved Juſtice above the rank of his Predeceſſors, and in ſome reſpects above himſelf; for he advanced *Gaſcoign* for doing Juſtice, though to the King's own ſhame. He liked not to intrude himſelf into Elections, and therefore though requeſted by the Monks of *Canterbury*, he would not nominate a Succeſſor to Arch-Biſhop *Arundel*, but left the whole work to them. In the Authority of his place, he was moderate, and where his Predeceſſors did matters without the Lords conſent, when he made his Unkle the Marquis of *Dorſet*, Duke of *Exeter*, and had given him a penſion to maintain that honour, he asked the Lords conſent thereto. To the Clergy he was more than juſt, if not indulgent, led thereto by his Father's example, as being wrapped up in the ſame Intereſt as I conceive, rather than out of any liking of their ways, now growing more bold upon uſurpation than in former times. Or it may be that having prevailed in that work in *France*, which to any rational Man muſt needs appear above the power of the King, and all the Realm of *England*; he looked upon it as more than humane, and himſelf as an inſtrument of Miracles; and was ſtirred up in his zeal to God, according to his underſtanding in

Antiq. Brit

Walſing.

thoſe dark times, to give the Clergy ſcope, and to pleaſure them with their liberty of the Canon-Law, that began now to thunder with fire and terrour, in ſuch manner, that neither greatneſs nor multitude could withſtand the dint, as was evidenced, in that penance inflicted upon the Lord *Strange*, and his Lady in caſe of Blood-ſhed in Holy Ground, and their hot purſuit of the Lord *Cobham*, unto a death of a new Nature, for ſomewhat done, which was ſometimes called Treaſon, and ſometimes Hereſie: And thus became *Henry* the Fifth baptized in the flames of the *Lollards*, as his Father had ſadly rendred up his ſpirit in the ſame. I ſay, in this he is to be looked upon, as one miſled for want of light, rather than in oppoſition againſt the light: For in his laſt Will, wherein Men are wont to be more ſerious and ſincere, amongſt his private regards he forgets not to reflect upon Religion to this purpoſe: *We further bequeath* (ſaith he) *to the redundant Mercy of the Moſt Excellent Saviour, the Faith, Hope, and Charity, the Vertue, Proſperity, and Peace, of the Kings our Succeſſors, and of our Kingdom of* England; *that God for his Goodneſs ſake would Protect, Viſit, and Defend them from Diviſions, Diſſenſions, and from all manner of Deceitfulneſs of Hereticks.* And thus Piety, Juſtice, and Moderation of *Henry* the Fifth, Adorned and Crowned the honour of his Courage and Greatneſs, with that honourable Title of *Prince of Prieſts*: and had he been bleſſed with a clearer light, he might as well under God have obtained the Title of *Prince of Princes*, wanting nothing that might have rendred him a precedent of Fame.

Antiq. Brit. 285.

But

BUt the time is now come, that the Tide of *England's* Glory must turn, and the sudden Conquest in *France*, by *Henry* the Fifth, not unlike the Macedonian Monarchy, must disgorge it self of what it had hastily devoured, but never could digest. Three things concurred hereunto, one dangerous, the other two fatal to the flourishing condition of any Nation. *Henry the Sixth.*

First, The King is a Minor in the least degree that ever any Prince sate on English Throne: He entred thereinto, neither knowing what he did, nor where he was; and some say, he sat therein in his Mothers Lap: for his Life had been more in the Womb, than abroad. A sad presage of what followed, for many Men think that he was in a Lap all his days. Nor are the chief men to be blamed herein, for it's a certain Truth, that it's much better that Election of a King should be grounded upon a rule that is known, though it be by descent of Inheritance, than upon none at all. For if a Child should succeed, or a Lunatick, yet where the Principle of Government resteth upon the Representative of the People, there is the less cause of Complaint, the Government being still the same, both for Strength, Wisdom, and Uniformity: though it may be the Nation not so Active and brave. For a Common-Wealth can admit of no Minority, though a Monarchy by descent may.

Secondly, This deficiency in Nature might have been supplyed, but that these times were unhappy in the great power of the Lords: to please whom, the Government is parcelled out into two shares: One is made Protector of the King's Person, the other Protector of the Kingdom: too many by one: For let their Persons be never so eminent for Abilities, if they be not as eminent for Humility, and self-Command, their hearts will soon over-rule their heads into a Faction: And therefore though the Earl of *Warwick* was a wise Man, and the Duke of *Glocester* a wise Man, yet the Earl of *Warwick* with the Duke of *Glocester* were not wise. On the other side, the Protectorship of the King's Person, being in the

Duke of *Exeter*, and that of the Realm in the Duke of *Gloceſter*; things ſucceeded paſſing well, for they both had one publick aim, and the Duke of *Exeter* could comply with the Spirit of the Duke of *Gloceſter*, who otherwiſe was not ſo pliant: But after five years, the Duke of *Exeter* dying, and the Government of the King's Perſon devolving to the Earl of *Warwick*, who ſided with the proud Cardinal of *Wincheſter*, againſt the Duke of *Gloceſter*, and ſo not only conſumed the reſt of the King's Nonage in a reſtleſs diſturbance of Affairs, but alſo deſpoyled *Henry* the Sixth, of the Spirit of a King for the future, and ſo the Kingdom of a King: For it was not the condition of *Henry* the Sixth, to be endowed with a Spirit of ſuch height, but might well have been led by advice, and needed not the Earl of *Warwick*'s rugged brow to overlook him; who was not content to have the King only attendant upon his advice: but muſt likewiſe have him under his Rod, to be corrected for his faults, and that by a Commiſſion under the King's own hand and Seal, dated in the eleventh year of the King's Reign, and ſo under Colour of Curbing, he killed that ſpirit in the King, which otherwiſe, doubtleſs, had both ſpirit and pride enough to act himſelf above his due height, and could not have been ſo long a Child, and ſo little a Man as he was.

It is very true, that *Henry* the Fifth by Will, ſeemed to countenance his Brothers, and it cannot be denyed but the Duke of *Gloceſter*, was of ſuch noble parts, that they could hardly dilate in any work inferiour to the Government of a Kingdom. Nevertheleſs, to yield much to the will of a ~~diſeaſed~~ King in ſuch Caſes, is as ill a precedent, as the making of a King by Adoption: and it had been better for the people to have adhered to the Duke of *Gloceſter* alone, than by joyning him with another, bring into a precedent ſuch a luxuriant Complement of State, as a Protectorſhip of a Kingdom, which is of ſuch little uſe to a Common-Wealth, and of ſo bitter Fruit to the Party, as muſt needs bring repentance when it is too late; *For he that can manage the Protectorſhip of a Realm, without*

without anger of good Men, or envy of bad Men, is fitting to live only with Angels, and too good for the World. Nor did the Duke of *Gloceſter* meet with better meaſure, how wiſe ſoever he was, and truly devoted to the good of the Realm: For after four and twenty years Government, ſo wiſely and faithfully carried on by him, that Juſtice it ſelf could not touch his Perſon; unjuſtice did, and he received this reward from his Nephew *Henry* the Sixth, that he died in the dark, becauſe the cauſe durſt not endure the light.

Now is *Henry* the Sixth perſwaded that he is of full Age, he had laid aſide his Guardian, the Duke of *Gloceſter*, but forgetting to ſue out his Livery, he betakes himſelf from the Grace of God, into the warm Sun, (as the Proverb is) changing the advice of a faithful experienced wife Counſellour, for the Government of an Imperious Woman, his Queen, who allowed him no more of a King, than the very Name; and that alſo ſhe abuſed to outface the World: and after ſhe had removed the Duke of *Gloceſter* out of the way, undertook the ſway of the Kingdom in her own Perſon, being a Foraigner, neither knowing, nor caring for other Law, than the Will of a Woman.

Thus the glory of the Houſe of *Lancaſter* goes down; and now a Star of the Houſe of *York* appears in the riſing, and the people look to it. The Queen hereat becomes a Souldier, and begins the Civil Wars between the two Houſes, wherein (her Engliſh party growing wiſe and weary) ſhe prays aid of *Ireland*, a Nation that like unto Crows, ever wait to prey upon the infirmities of *England*. The Wars continue about ſixteen years by fits, wherein the firſt loſs fell to the Engliſh party, the pretenſions being yet only for good Government: Then the Field is quiet for about four years, after which the clamour of ill Government revives, and together therewith a claim to the Crown by the Houſe of *York* is avouched; thereupon the Wars grew hot for about four years more, and then an ebb of as long quiet enſues. The Tide at laſt returns, and in

Comin. lib. 1. *cap.* 7. two years War, ends the quarrel, with the death of fourſcore Princes of the Blood Royal, and of this good Man, but unhappy King. Unhappy King, I ſay, that to purchaſe his Kingdoms Freedom from a Foraign War, ſold himſelf to a Woman, and yet loſt his bargain, and left it to Obſervation; *That a Conſcientious Man, that marries for by-regards, never thrives*: For *France* eſpyed their advantage, they had maintained War with *England*, from the death of *Henry* the Fifth, with various ſucceſs: The Duke of *Bedford* being Regent for the Engliſh, for the ſpace of fourteen years mightily ſuſtained the fainting condition of the Engliſh affairs in thoſe parts, and having Crowned his Maſter *Henry* the Sixth in *Paris*, in the ninth year died, leaving behind him an Honourable Witneſs, even from his enemies, *That he was a brave Commander, a true Patriot, and a Faithful Servant to his Lord and Brother* Henry *the Fifth, and to his Son* Henry *the Sixth.* But now the Duke of *Bedford* is dead; and though *France* had concluded a Peace with the Engliſh, yet they could not forget the ſmart of their Rod; but concluded their Peace upon a Marriage, to be had with a Woman of their own blood and intereſt: and what they could not effect by Arms in their own Field, they did upon Engliſh ground by a Feminine Spirit, which they ſent over into *England* to be their Queen, and in one Civil War (ſhedding more Engliſh blood by the Engliſh Sword, than they could formerly do by all the Men of *France*) were revenged upon *England* to the full, at the Engliſh-mens own charge: For what the Engliſh gain by the Sword, is commonly loſt by diſcourſe. A Kingdom is never more befooled, than in the Marriage of their King; if the Lady be great, ſhe is good enough, though as *Jezabel* ſhe will not either reverence her Husband, obey her Lord and King, nor regard his People. And thus was this Kingdom ſcourged by a Marriage, for the ſin of the wiſe Men, that (building upon a falſe Foundation) adviſed the King in the breach of Contract with the Earl of *Arminiack*'s Daughter. And thus the King alſo for that hearkning to ſuch Council, he murthered the Duke of *Gloceſter*, (that had been to him a Father) yielded

Comin. lib. 3. *cap.* 8.

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up his Power to his Queen, (A Masterless and Proud Woman, that made him like a broken Idol without use) suffered a Recovery of his Crown and Scepter in the Parliament from his own Issue, to the Line of *York*; then renewing the War (at his Queens beck) lost what he had left of his Kingdom, Countrey, and Liberty, and (like the King that forgot the kindness of *Jehojada*) lost his Life by the hand of his Servant.

CHAP. XIV.

Of the Parliament, during the Reigns of these Kings.

THe interest of the Parliament of *England*, is never more Predominant, than when Kings want Title or Age: The first of these was the Case of *Henry* the Fourth immediately, but of them all in relation to the pretended Law of the Crown: but *Henry* the Sixth, had the disadvantage of both, whereof in its due place.

The pretended Law of the Crown of *England*, is to hold by Inheritance, with power to dispose of the same, in such manner, by such means, and unto such persons, as the King shall please. To this it cannot be denyed, divers Kings had put in their claims, by devising their Crown in their last Will; but the success must be attributed to some Power under God, that must be the Executor when all is done, and which must in Cases of Debate concerning Succession, determine the matter by a Law, best known to the Judge himself.

Not much unlike hereunto, is the Case of *Henry* the Fourth, who like a Bud, putting up in the place of a fading Leaf, dismounts his Predecessor: First, from the peoples

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regard, and after from his Throne, which being empty, ſome times he pretended the reſignation of his Predeceſſor to him; other whiles an obſcure Title by deſcent, (his Conſcience telling him all the while that it was the Sword that wrought the work.) But when he comes to plead his Title to Foraign Princes by proteſtation, laying aſide the mention of them all; he juſtifies upon the unanimous conſent of the Parliament, and the people in his own only Perſon: And ſo before all the World, confeſſed the Authority and power of the Parliament of *England*, in diſpoſing of the Crown in ſpecial Caſes, as a ſufficient bar unto any pretended right that might ariſe from the Houſe of *Mortimar*. And yet becauſe he never walks ſafely that hath an Enemy purſuing him ſtill within reach, he bethinks himſelf not ſure enough, unleſs his next Succeſſors follow the dance upon the ſame foot; to this end an Act of Parliament leads the Tune, whereby the Crown is granted or confirmed to *Henry* the Fourth for life, and entailed upon his Sons, *Thomas*, *John*, and *Humphrey*, by a Petition preſented, 5 *Hen.* 4.

7 *H.*4 *cap.*2. 8 *H.*4. *n.*38. Thus *Henry* the Fourth, to ſave his own ſtake, brought his Poſterity into the like capacity with himſelf, that they muſt be Kings, or not ſubſiſt in the World; if the Houſe of *York* prevails; and ſo he becomes ſecured againſt the Houſe of *York*, treading on his heels, unleſs the Parliament of *England* ſhall eat their own word: However for the preſent, the Houſe of 39 *H.*6. *n.*18. *Lancaſter* hath the Crown entailed, and the Inheritance is left in the Clouds to be revealed in due time. For though this was the firſt precedent of this kind, yet was it not the laſt, wherein the Parliament exerciſed a Power by Grant or Confirmation, to direct the Law and Courſe of the Crown as they pleaſed.

The due conſideration hereof, will make the things that follow, leſs ſtrange: For the Parliament according to occaſion, as the Supreme power of this Kingdom, exerciſed Supreme Juriſdiction in order to the ſafety of the Kingdom, as if no 1 *H.*6. *n.*12, 13. King had been to be found, in iſſuing forth Writs under the Great Seal; concluding of matters without the Royal Aſſent: treating

treating of Peace with Foraign Nations, and of other matters, and determining their Resolves before discovery made to the King of their Councils; making Ordinances, and ruling by them, 3 *H. 6. n.* 29. 2 *H. 6. n.* 27. 8 *H. 6. n.* 12. referring matters determinable in Parliament, to be determined according to their directions, *Authoritate Parliamenti*: Confirming Peace made by the King, protesting against Peace, made without or against their consent: making Ambassadours with power to engage for the Kingdom: making Generals of the Army, Admirals at Sea, Chancellors, Barons, and Privy Counsellors, and giving them instructions, 8 *H.* 4. *n.* 73. *and* 76. *and* 31. 5 *H.* 4. *n.* 57. 31 *H. 6. n.* 21. and binding them to observance upon Oath, 11 *H.* 4. *n.* 19. 39. Ordering the person of the King, denying his power of Judicature in Parliament, and ordering his Household and Revenue; besides many other particulars.

6 *Hen. 6 n.* 22.
1 *H. 6. n.* 2, 4.
9 *H.* 4. *n.* 21.
4 *H. 6. n.* 15. *Cir.* 3. & 4.
H. 5. *n.* 14.
3 *H. 6 n.* 19.
1 *Hen. 6. n.* 16. & 4 *H. 6.*
8 *Hen. 6. n.* 27.
28 *H. 6. n.* 51.
23 *H. 6. n.* 51, 52.
17 *H. 6. n.* 11.
8 *Hen.* 4. *n.* 71.

Now if such as these things were thus done, not by one Parliament, which possibly might be overswayed by Factions, but by the course of a *Series* of Parliaments, that mightily laboured against Faction, and unworthy ends and aims, that man who shall determine the same to be unjust or indiscreet, should himself first be determined to be very just, and exceeding wise. Nor was the Parliament partial in all this, but being in a way of Reformation, it set upon the work of reforming it self.

Some that are very zealous in the point of Arbitrary and absolute Government of Kings in this Nation, and in all other, amongst other grounds rest upon this one, That an English King hath power to call Parliaments, and dissolve them; to make and unmake Members as he shall please. I do easily grant that Kings have many Occasions and Opportunities to beguile their people, yet can they do nothing as Kings, but what of right they ought to do: They may call Parliaments, but neither as often or seldom as they please, if the Statute-Laws of this Realm might take place: Nor if they could, is that power necessarily, and absolutely arising from Supremacy; seeing it is well known that such power is betrusted

by the Superiour States in other Nations, to the Inferiour, who daily attend on publick Affairs, and therefore can discern when the general Conventions are most necessary. As touching the dissolving of Parliaments against the wills of the Houses, it's true that sad precedents have been of later times in that kind; and so for want of due attendance, Parliaments have been enforced to adjourn, to prevent a worse inconvenience; but these are infirmities better buried in silence, than produced as Arguments of power, seeing it's evident that Kings themselves were no greater gainers thereby, than an Angry Man is by his passions. It is true also that Kings may make Lords, and Corporations, that may send their Burgesses to the Parliament, and thus the King may make as many as he will (as the Pope did with the Bishops in the Council of *Trent*) yet cannot he unmake them when he pleases, nor take the Members from the Parliament, without attainder and forfeiture, according to the known Law: Neither can all these Instances prove, that the Kings of *England* have the sole and Supreme power over the Parliament: Nor did the Parliament in these times allow of any such Authority, and therefore proceeded for the reforming of themselves, by themselves, in many particulars as the Statutes do hold forth.

7 *H.* 4. *c.* 15. 23 *H.* 6. *c.* 15. And First in the point of Elections, (for an errour in that, is like an errour in the first Concoction, that spoils the whole Nutriment,) they ordained that the Election of Knights shall be at the next County-Court, after the Writ delivered to the Sheriff.

That in full Court between the hours of eight and nine in the morning, Proclamation shall be made of the day and place of the Parliament. That the Suters duly summoned, and others there Present, shall then proceed to the Election; notwithstanding any Prayer or Commandement to the contrary. That the names of the Persons elected, (whether present or absent they be) shall be returned by Indenture, between the Sheriff and the Elizors; and that a Clause to that end shall be added to the Writ of Summons.

This

This was enough to make the Sheriff understand, but not to obey, till a penalty of one hundred pound is by other Laws imposed upon him, and a years imprisonment without Bail or Mainprise, besides damages for false return in such Cases: and the party so unduly returned, Fined, and deprived of all the wages for his service. Thus the manner of Election is reduced; but the Persons are more considerable: For hitherto any Man of English blood promiscuously had right to give or receive a Vote, although his Residency were over the wide World. 11 *H.* 4. c. 1. 8 *Hen.* 6. c. 7. 23 *H.* 6. c. 15.

But the Parliament in the time of *Henry* the Fifth, reduced these also, (whether they were such as did chuse, or were chosen) unto their proper Counties, or else rendred them uncapable to Vote or serve for any County. And the like Order was made for the Burroughs, *That no Person must serve for any City or Burrough, nor give Vote in Electing such as shall serve for that Town, unless they be both Free, and Resiants within that City or Burrough*: A Law no less wholsome than seasonable. For the times of *Henry* the Fourth, had taught Men to know by experience, That a King that hath Souldiers scattered over the Kingdom, can easily sway the County courts, and make Parliaments for their own Tooth. Yet this was not enough, For all Elizors, though of the meanest sort, yet are still able to do as much hurt with their Vote, as those of the best sort both for wisdom and publick mind, can do good by theirs. This made Elections much subject to parties, and confusions, and rendred the Parliament much less considerable. 1 *Hen.* 5. c. 1. 8 *Hen.* 6. c. 7. 23 *Hen.* 6 c. 15.

A remedy hereunto is provided, in the minority of *Henry* the Sixth, *Viz. That no Man should give his Vote in Elections in the County, unless he hath forty shillings yearly in Free Lands or Tenements, and this is to be testified upon Oath of the Party.* And more plainly it is ordered (within two years after) that each Elizor shall have Frank Tenement of that value within the same County. And thus the Free-men yielded up their liberty of Election to the Free-holders, possibly not knowing what they did; Nevertheless, the Parliament well knew what they did, this change was no less good than great. 8 *Hen.* 6. c. 7. 10 *Hen.* 6. c. 2.

For first, These times were no times for any great measure of Civility: The Preface of the Statute shews, that the meanest held himself as good a Man, as the greatest in the Country, and this tended to parties, tumults, and bloodshed.

Secondly, where the multitude prevail, the meaner sort are upon the upper hand; and these (generally ignorant) cannot judge of Persons, nor Times, but being for the most part led by Faction or Affection, rather than by right Understanding, make their Elections, and thereby the general Council of this Nation, less generous and noble.

Thirdly, There is no less equity in the change, than policy: for what can be more reasonable, than that those Men only, should have their Votes in Election of the Common Council of the Kingdom, whose Estates are chargeable with the publick Taxes and Assessments, and with the Wages of those persons that are chosen for the publick Service: But above all the rest, this advancing of the Free-holders in this manner of Election was beneficial to the Free-men of *England*, although perchance they considered not thereof; and this will more clearly appear in the consideration of these three particulars.

First, It abated the power of the Lords, and great Men, who held the inferiour sort at their Devotion, and much of what they had by their Vote.

Secondly, It rendred the body of the people more brave; for the advancing of the Free-holder, above the Free man, raiseth the spirit of the meaner sort to publick regards, and (under a kind of Ambition) to aspire unto the degree of a Free-holder, that they may be somewhat in the Common-Wealth, and thus leaving the meanest rank sifted to the very bran, they become less considerable, and more subject to Coercive power, whilst in the mean time the Free-holder now advanced unto the degree of a Yeoman, becomes no less careful to maintain correspondency with the Laws, than he was industrious in the attaining of his degree.

Thirdly, By this means now the Law makes a separation of the inferiour Clergy, and Cloistered people, from this service, wherein

wherein they might ſerve particular ends much, but *Rome* much more. For nothing appeareth, but that theſe dead perſons in Law, were nevertheleſs, Free-men in Fact, and loſt not the liberty of their Birth-right, by entring into Religion, to become thereby either Bond, or no Free-Members of the people of *England.*

Laſtly, As a binding plaiſter above the reſt; Firſt, a Negative Law is made, that the perſons elected in the County, muſt not be of the degree of a Yeoman, but of the moſt noted Knights, Eſquires, or Gentlemen of the Countrey; which tacitely implies that it was too common to advance thoſe of the meaner ſort; whether by reaſon of the former waſting times, Knights and Eſquires were grown ſcant in number, or (by reaſon of their rudeneſs) in account: Or it may be the Yeomanry grew now to feel their ſtrength, and meant not to be further underlings to the great Men, than they are to their Feathers, to wear them no longer than they will make them brave. Secondly, the perſon thus agreed upon, his entertainment muſt be accordingly, and therefore the manner of taxing in full County, and levying the rate of Wages for their maintenance, is reformed and ſettled. And Laſtly, Their perſons are put under the protection of the Law in an eſpecial manner, for as their work is full of reflexion, ſo formerly they had met with many ſad influences for their labour. And therefore a penal Law is made, againſt force to be made upon the perſons of thoſe Workmen of State, either in their going to that Service, or attending thereupon, making ſuch Delinquents liable to Fine and Impriſonment, and double damages. And thus however the times were full of confuſions, yet a foundation was laid of a more uniform Government in future times, than *England* hitherto had ſeen.

23 *H.6. c.15.*

23 *H.5. c.11.*

11 *H. 6. c.11.*

CHAP.

CHAP. XV.

Of the Cuſtos, *or*, Protector Regni.

KIngs, though they have vaſt dimenſions, yet are not infinite, nor greater than the bounds of one Kingdom, wherein, if preſent, they are in all places preſent; if otherwiſe, they are like the Sun gone down; and muſt rule by reflexion, as the Moon in the night: In a mixt Common-Wealth, they are integral Members, and therefore regularly muſt act, *Per deputatum*, when their perſons are abſent in another Legialty, and cannot act, *Per ſe:* Partly becauſe their Luſtre is ſomewhat eclipſed by another Horizon; and partly by common intendment they cannot take notice of things done in their abſence. It hath therefore been the ancient courſe of Kings of this Nation, to conſtitute Vice-gerents in their abſence, giving them ſeveral Titles, and ſeveral powers, according as the neceſſity of affairs required: Sometimes they are called Lord Warden, or Lord Keeper of the Kingdom, and have therewith the general power of a King, as it was with *John Warren* Earl of *Surrey*, appointed thereunto by *Edward* the Firſt, who had not only power to command, but to grant, and this power extended both to *England* and *Scotland*. And *Peter Gaveſton* (though a Foraigner) had the like power given him by *Edward* the Second over *England*, to the reproach of the Engliſh Nobility, which alſo they revenged afterward. Sometimes theſe Vice-gerents are called Lieutenants, which ſeemeth to confer only the King's power in the Militia, as a Lieutenant-General in an Army. And thus *Richard* the Second made *Edmund* Duke of *York*, his Lieutenant of the Kingdom of *England*, to oppoſe the entry of the Duke of *Hereford*, (Afterwards called *Henry* the Fourth) into *England*, during the King's abſence in *Ireland:* And in the mean

Rot. Pat. 24 E. 1. m. 4.

Rot. Pat. 11 2. m. 2.

mean while the other part of the Royalty which concerned the Revenues of the Crown was betrusted to the Earl of *Wiltshire*, Sir *John Bush*, Sir *James Baggot*, and Sir *Henry Green*, unto whom (Men say) the King put his Kingdom to Farm. But more ordinarily the King's power was delegated unto one, under both the Titles of Lord Guardian of the Kingdom, and Lieutenant within the same; such was the Title of *Henry Lacy* Earl of *Lincoln*, and of *Gilbert De Clare* Earl of *Gloucester*, and of *Audomar De Valentia* Earl of *Pembroke*, all of them at several times so constituted by *Edward* the Second, as by the Patent Rolls appeareth: So likewise did *Edward* the Third, make his Brother *John* of *Eltham* twice, and the Black Prince thrice, and *Lionel* Duke of *Clarence*, and his Brother *Thomas* each of them once in the several passages of *Edward* the Third beyond the Sea, in the third, fifth, twelfth, fourteenth, sixteenth, nineteenth, and thirty third years of his Reign concerning which see the Patent Rolls of those years. And *Henry* the Fifth gave likewise the same Title and Authority to the Duke of *Bedford*, upon the King's Voyage into *France*; and afterward that Duke being sent over to second the King in the French Wars, the Duke of *Gloucester* obtained the same power and place. But *Henry* the Sixth added a further Title of Protector, and Defender of the Kingdom and Church of *England*; this was first given to the Duke of *Bedford*, and afterwards he being made Regent of *France*, it was conferred upon the Duke of *Gloucester*. And towards the latter time of *Henry* the Sixth, it was granted by him to *Richard* Duke of *York*. This Title carried along with it a power, different from that of a King only in honour, and the person so adorned may be said to sway the Scepter, but not to wear the Crown. And therefore in the minority of *Henry* the Sixth, when as the Government was ordered by the Parliament, and to that end a Protector was made, and he well guarded with a Privy Council, and they provided with instructions, one of them was, that in all matters not to be transacted ordinarily but by the King's express consent, the Privy Council should advise with the Protector; but this is not so needful, in regard that

Pat. Pat 4 E. 2. Pf. 1. m. 18.

10 Hen. 5. p. 1. m. 9.

7 H. 5. m. 25.

1 Hen. 6. p 2. m. 5.

22 H. 6. m. 7.

that it concerneth the power of executing of Laws, which by right of the liberty of the Subject is the known duty of the Scepter, in whose hands soever it is holden. And therefore I shall pass to the Legislative power, wherein it's evident that the Protector's power was no whit inferiour to the King's power. For First, The Protector, *Ex officio*, by advice of the Council, did summon Parliaments by Writs, even as the Kings themselves, under their own Teste; and if not bear the Royal Assent, yet did they direct the same, and received petitions in Parliament to them directed as to Kings, and every way supplyed the Room of a King, in order to the perfecting, publishing and enforcing of Law to Execution. Secondly, The Parliaments holden by Protectors, and Laws therein made, are no whit inferiour to those by the King, whether for Honour, or Power: And therefore if a Parliament be holden by the Lord Warden, and sitting the Parliament, the King in person shall arrive, and be there present; neither is the Parliament interrupted thereby, nor the power thereof changed at all; though the power and place of the Wardenship of the Kingdom, doth utterly vanish by the personal access of the King; because in all places, where the King is subservient to the Kingdom, or the Common-Wealth, the Lord Warden in his absence is conservient unto him, being in his stead, and not under him, for the very place supposeth him as not, because not present. And this was by a Law declaratively published at such time as *Henry* the Fifth was Regent of *France*, and therefore by common presumption, was likely to have much occasion of residence in that Kingdom, and it holdeth in equal force with all other Laws of the highest size, which is the rather to be noted because it is (though under a Protector) obligatory to the King, and makes his personal presence no more considerable than the presence of his shadow. For the King spent three whole years in the French Wars, and during that time never saw *England*, where nevertheless, in that interim three Parliaments had been holden, one by the Duke of *Bedford*, and two by the Duke of *Glocester*; in the last of which this Law was made, And in truth if we look upon this Title of the Kingdoms

8 *H.* 5. *c.* 1.

doms Guardianship in its bare lineaments, without lights and shadows, it will appear little better than a Crown of Feathers worn only for bravery, and in nothing adding to the real ability of the governing part of this Nation: Neither were the persons of these *Magnificoes* so well deserving, nor did the Nation expect any such matter from them. *Edward* the First was a wise King, and yet in his absence chose *Edward* the Second to hold that place, he being then not above fourteen years of Age, afterwards *Edward* the Second's Queen, and the Lords of her party, were wise enough in their way, and yet they chose *Edward* the Third to be their *Custos Regni*, then not fourteen years old, his Father in the mean time being neither absent from the Kingdom nor deposed, but only dismissed from acting in the administration of the Government. *Edward* the Third follows the same example, he first makes his Brother *John* of *Eltham*, *Custos Regni*, and this he did at two several times, once when he was but eleven years old, afterwards when he was about fourteen: Then he made his Son, the Black Prince, upon several occasions three times Lord Warden of the Kingdom, once he being about nine years old, and again when he was eleven years old, and once when about fourteen years old. Lastly, *Edward* the Third appointed his Son *Lionel* Duke of *Clarence* unto this place of *Custos Regni*, when as he was scarce eight years old, all which will appear upon the comparing their Ages with the several Rolls of 25 E. 1. & 3, 5, 12, 14, 16, 19 E. 3. If therefore the work of a *Custos Regni*, be such as may be as well done by the Infants of Kings as by the wisest Counsellor, or most valiant Man; it is in my opinion manifest that the place is of little other use to this Common-Wealth than to serve as attire to a comely person, to make it seem more fair because it is in fashion, nor doth it advance the value of a King, one grain above what his Personal endowments do deserve.

Pat. Pat. 5 E. 3. p. 1. m. 16.

Hitherto of the Title and power; the next consideration will be of the original Fountain from whence it is derived, wherein the precedents are clear and plain, that ordinarily they are the next and immediate off-spring of Kings, if they be pre-

ſent within the four Seas; to be by them enabled by Letters Patents or Commiſſion: But whether preſent or abſent, the Parliament when it ſate did ever peruſe their Authority, and if it ſaw need, changed, enlarged, or abridged both it and them. Thus was the Duke of *Gloceſter* made Lord Warden in the time of *Henry* the Fifth (he being then in *France*) in the room of the Duke of *Bedford*, the like alſo in *Henry* the Sixth's time, when as the King was young; for then the Parliament made the Duke of *Bedford* Lord Warden, and added unto that Title, the Title of Protector. Afterward at the Duke's going over into *France*, they committed that Service to the Duke of *Gloceſter* (if I forget not the nature of the Roll) during the Duke of *Bedford*'s abſence and with a Salve of his right, Nor unlike hereunto was the courſe that was taken by the Parliament in theſe ſullen latter times of *Henry* the Sixth, whereof more hereafter in the next Paragraph.

Laſtly, The limitation of this high power and Title is different according to the occaſion, for the Guardianſhip of the Kingdom by common intendment, is to endure no longer than the King is abſent from the helm, either by voluntary deſerting the work, or employment in Foraign parts; though united they be under the Government of the ſame King; together with this Nation, ſuch as are theſe parts of *France*, *Ireland*, and *Scotland*, then under the Engliſh Fee: This is apparent from the nature of that Statute of *Henry* the Fifth formerly mentioned; for if there was need to provide by that Statute, that the King's Arrival and Perſonal preſence ſhould not diſſolve the Parliament, aſſembled by the Authority of the *Cuſtos Regni*; then doth it imply, that the perſonal preſence of the King, by and upon his Arrival had otherwiſe determined the Parliament and that Authority whereby it ſate. But the precedents are more clear, all of them generally running in theſe, or the like words, *In abſentia Regis*, or *Quamdiu Rex fuerit in partibus tranſmarinis*. It is alſo to be granted, that the King's will is many times ſubjoyned thereunto, as if it were in him to diſplace them, and place others in his abſence; yet do I find no precedent of any ſuch nature, without the concurrence

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of the Lords or Parliament, and yet that the Parliament hath ordered such things without his consent. For when *Richard* the First, passing to the Holy Land, had left the Bishop of *Ely* to execute that place during his absence in remote parts; the Lords finding the Bishop unfaithful in his Charge, excluded him both from that place and Kingdom, and made the King's Brother *John*, Lord Warden in his stead.

But in the Case of the Protectorship, which supposeth disability in the person of the King, the same by common intendment is to continue during the King's disability; and therefore in the Case of *Henry* the Sixth, it was determined, that the Protectorship doth *Ipso Facto*, cease at the King's Coronation, because thereby the King is supposed able to govern; although in latter times it hath not so been holden: For Kings have been capable of that Ceremony, as soon as of the Title, and yet commonly are supposed to be under the rule of necessity of Protectorship, till they be fourteen years of Age, or (as the Case may be) longer: For although *Henry* the Sixth was once thought ripe, when he was eight years old, yet in the issue he proved scarce ripe for the Crown at his two and twentyeth year. Nevertheless, the default of Age is not the only incapacity of Kings; they have infirmities as other Men, yea more dangerous than any other Man; which though an unpleasant Tune it be to harp upon, yet it is a Theam, that Nations sometimes are enforced to ruminate upon, when God will give them Kings in his Wrath, and those also over to their own lusts in his anger. In such Cases therefore, this Nation sometimes have fled to the refuge of a Protector, and seldom it is, that they can determine for how long: When *Henry* the Sixth was above thirty years old, *Richard* Duke of *York* was made Protector, and Defender of the Realm, and of the Church; It was done (if the Record saith true) by the King himself, *Authoritate Parliamenti*: It was further provided by the Parliament, that though this was to continue, *Quamdiu Regi placuerit*, yet the Duke should hold that place, till the King's Son *Edward*, should come to years of discretion, and shall declare that he will take that place upon himself. 8 H. 6. n. 2.

Rot. Pat. 32 Hen. 6. m. 7. The ground hereof is said to be, that the King was, *Gravi infirmitate detentus*, which could not be intended of any bodily distemper; for neither doth any such thing appear by any Authour or Record. Nor if such had been, yet had it been an irrational thing in the Parliament, to determine the same upon the Princes discretion, and acceptance of the Charge upon himself. It seemeth therefore, that it was, *Gravis infirmitas Animi*, and that this way of the Parliament tended to a tacite sliding him out of the Government of the Kingdom, by a moderate expression of a general incapacity in his person.

The Conclusion of all that hath been said concerning this Title, is double: One, that both the *Custos Regni*, and Protector are not subsistent, but consistent with that of a King, because it supposes a King under incapacity.

Secondly, That they tend to teach the people a necessity of having one Chief, although it may, in truth, seem to be but a trick of State; like some pretty carved Cherubims in the Roof of a building, that do seem to bear it up, when as, in truth, it is the Pillars that support both it and them.

CHAP. XVI.

Concerning the Privy-Council.

NAtions do meet with their Exigencies as well as persons, and in such condition, Resolutions taken up by sudden conceit, are many times more effectual than more mature deliberations, which require more time in composing, are more slow in Conclusion, let slip opportunities, and fall short of expectation in the end. Such are the ways of debate in the Grand Representative of the Kingdom. Add hereunto, that in putting the Laws in execution, greater discretion is required, than can enter into the head of any one Man, and greater speed than can stand with debate amongst many: And therefore it is beyond all doubt, that the Conventicles of Council, are no less necessary in their degree, than the Assembly of the Estates of this Nation, in their Grand Convention.

Yet with this Caveat, that one Genious may move in both; for otherwise the motions of Government must needs be inconstant, inconsistent, and like that of an Hypocrite, one way abroad, another way at home; neither comfortable to it self, nor confiding to others: and therefore cannot these privater Councils, by any proportion of Reason, be better Constituted, than by the Representative it self, that it may be a Creature made in its own Image, one and the same with the Image of the maker.

This was the wisdom and the practice of these times, more ordinarily than in the former; for the Parliament was no less jealous of the power of *Henry* the Fourth, than of the infirmities of *Henry* the Sixth; nor more assured in the aims of any of them all, than themselves were in their own Title to the Crown. 5 *H.4.n.*37 8, *n.* 31. 11. *n.* 44. 2 *H.6. n.* 15, 16. 31 *H.* 6. *n.* 32.

Neither was this sufficient, for the Parliament looked upon themselves as a body that sometimes must retire to rest, and

and upon the Privy Council, as Watch-men subject to change,
8 *H.6. n.*8, 1, 2, 14, 26. and therefore they not only give them instructions but engage them unto observance. Their instructions were sometimes occasional but some more general, of which I shall instance only in two, which were to be of everlasting regard. First, That they should hold no pleas before them, that is to say, at the Council-Table, or at the Privy Council, nor before any of them unless as Judges in the Chancery, Exchequer, or
8 *H* 4. *n.* 7, 6. Benches at *Westminster*; so as whatsoever miscarriages were had by the Privy Council in Cases of Judicature in the Star-Chamber formerly, are now reduced; The second rule was
5 *H.*4. *n.* 37. 8 *H.* 4. *n.* 73. this, That no dispatches should be made at the Council-Table of any matters there agitated, but by general consent. Unity gives life to Action, carrying therewith both Authority and Power; and when all is done, must derive its original from without and in all good ends from above. And therefore as a seal to all the rest it was wisely done by the Parliament to draw the minds of the Privy Council together, and to present them jointly before God, by an Oath obliging themselves to a solemn
11 *H* 4. *n.* 14, 39. and constant observance of their instructions, and to persevere therein: for the unchangeable God can only stamp a lasting Image upon the mind, and bind the same (that is so subject to change to an unchangeable Law) whereby the people may be made as happy for continuance as for Righteousness and Peace.

The Privy Council thus settled, dressed, and girt, becomes of high esteem, both for trust and honourable employment in great matters. The Mint is the very Liver of the Nation, and was wont to be the chief care of the Parliament it self in all the dimensions thereof; now the Mint is two ways considered, *Viz.* either in the value of the Metal and Money, or in the Coynage.

The first of these, and things most immediately concurring therewith, the Parliament still retains to its own immediate Survey; such as are the inhibiting of exportation of Gold, and Silver; and of melting of Coyn into Plate or Bullion; the regulating of the currant of Foraign Coyn, the reducing of Money,

Money, both Foraign and Domeſtick, imbaſed by Counterfacture, clipping, waſhing, *&c.* The regulating of allay of Gold and Silver, the regulating exchange, and ſuch like; concerning all which, the Reader may pleaſe to peruſe the Statutes, 2 *H.* 4. *cap.* 5, 6, 11, 13. 4 *H.*4.*cap.*16. 3 *H.*5. *Stat.*1. *&* 4. *cap.* 6. *&* 9. *cap.* 11. And 2 *H.* 6. *cap.* 6.

The ſecond Conſideration touching the Mint, concerned the election, and government of the Officers, touching the Mint and Exchange, or the places where they ſhall be holden, which with ſome other matters of inferiour Nature, were left to the Order of the Privy Council, either with the King, or alone, in Caſe of the King's abſence or diſability. 1 *H.*6. *c.*7. 9 *H* 5. *c.*6.

A ſecond power given to the Privy Council, was in point of Trade, and Merchandize: formerly they had ſomewhat to do therein, but ſtill the Parliament ſet out their bounds in *Richard* the Second's time, the people had liberty of Trade in ſome Commodities, by way of Exportation, but the Privy Council might reſtrain them upon inconvenience to the publick: Now the ſame is confirmed, and though it concerned Corn only, yet it was a precedent that led the way to a much larger power in the Trade of the Staple Commodities of this Iſland, to enlarge or ſtraiten it as they thought meet; and ſo they became in a fair way to have a principal power over the Revenues and Riches of this Nation. But this laſted not long, for within ten years, theſe Licenſes of Tranſportation coſt the Merchant ſo much, as he could make little gains of all his care and pains, and therefore a rule is ſet to a general allowance of all Tranſportation of Corn, till the price of Wheat came to a Noble, and Barley at three ſhillings, and no longer. This being firſt made Temporary, was afterwards made perpetual, and ſo gave a reſtraint unto the power of the King and Council. But where no poſitive reſtraint was made by any Statute, the King and Council ſeemed to have the ſole power left unto them, to open and ſhut the paſſes of Trade as they pleaſed: For whereas the Commodity of Butter, and Cheeſe, was made Staple, the King and Council had 17 *R.*2. *c.* 7. 4 *H.* 6. *c.*5. 15 *H.* 6. *c.* 2. 20 *H.* 6. *c.* 6. 23 *H* 6 *c.*5.

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power to ſtop the ſale thereof; notwithſtanding, that the
18 *H.6. c.3.* Law gave full liberty to the Subjects to bring all their Staple Commodities to the Staple: Nevertheleſs, this power in the King is not primitive, but derived from the Parliament, for they had Power over the King's Licenſes, and Reſtraints in ſuch Caſes, as by the ſeveral Statutes do appear.

A third power given to the Privy-Council, was a power of Summons and Proceſs againſt Delinquents, in Caſes of Riots, Extortions, Oppreſſions, and grievous Offences; the Sum-
31 *H. 6. c.2.* mons to be by Privy-Seal, the Proceſs, Proclamations, and for Non-appearance, Forfeiture, if the Delinquent be of the Degree of a Lord, if of inferiour rank, then a Fine or Outlawry. At the firſt view the Statute hath an ill-favoured Aſpect, as if it raiſed up a new Court of Judicature, but the time is to be conſidered with the occaſion; for it was made for the ſecuring of the peace, in a turbulent time. And beſides, the Law carrieth along with it two Reſtrictions, which puts the right of Cogniſance in the Privy-Council to the queſtion.

Firſt, It ſaveth the Juriſdiction of other Courts, and provideth further, *That no matter determinable by the Law of this Realm, ſhall be by this Act determined in other form, than after the courſe of the ſame Law in the King's Court, having determination of the ſame*; which implieth, that ſome kinds of Riots, and Extortions, are of ſo high a nature, that though determinable in the King's Court, yet are they to be determined before the Lords.

In the next place, this Law provideth, That ſuch offences, as are determinable by the Law of the Realm, that is by Jury, ſhall ſtill be ſo tryed.

13 *H.4. c.7.* Secondly, If Conviction be upon Confeſſion, or by Certificate, in caſe where (by reaſon of Parties, and partakings) Inquiſition by Jury cannot be had, there the Lords ſhall immediately determine the ſame.

Laſtly, If the Certificate be traverſed, then the ſame ſhall be tryed in the King's Bench.

But

But there is another Reſtriction that undoeth all, in effect, in point of right, becauſe what this Law ſetleth therein, it ſetleth but for ſeven years, and leaveth the Privy Council to the limits of the Common Law for the future: In the mean time, the Privy Council may be thought terrible, and very high, both by this Law, and the greatneſs of the Lords. Kings Unkles, and Kings Brothers, are Subjects indeed, but of ſo high a Degree, that if a little goodneſs of Nature, or publick Spirit ſhine in them, they ſoon become the Objects of Admiration from the Vulgar, and gain more from them by their vicinity, than the King can do at a diſtance. For the Commons of *England*, by the fair demeanour of popular great Men, are ſoon won out of their very cloaths, and are never more in danger to part with their liberties, than when the Heaven is fair above their heads, and the Nobility ſerve the King, and flatter them. Nevertheleſs, as I ſaid, the ſeaſon muſt alſo be conſidered of this power, thus by this Law contracted; for what the Lords gained not by their popularity, the Queen did with her power; who now mindful of her contemned beauty, and oppoſition from the Duke of *Gloceſter* againſt her Marriage, removes him out of the way, gets the reins of Government into her hand and like a Woman drives on in full career.

The Duke of *York*, and other Lords, not liking this gallop, endeavour to ſtop her pace, but are all over-born, the Duke taken priſoner, and doubtleſs had pledged the Duke of *Gloceſter*, but that the Heir apparent of the Houſe of *York* ſteps in to reſcue; and new troubles ariſe in *Gaſcoign*, to put an end to which, the Queens party gains, and takes the Duke of *York*'s word for his good behaviour, gets this Law to paſs, expecting hereby, if not a full ſettlement at home, yet at leaſt a reſpite to prevent dangers from abroad, during the preſent exigency. And thus upon the whole matter, the Lords and Privy Council are mounted up by the Commons to their own miſchief.

CHAP. XVII.

Of the Clergy, and Church-Government, during these times.

IT was no new thing in the World, for Princes of a wounded Title, to go to the Church-men for a plaister, and they are ready enough to sing a *Requiem*, so as they may be the gainers: The Princes therefore of the House of *Lancaster*, had offended against common sense, if they had not done the like themselves, being not only guilty in their Title, but also by a secret Providence, drawn into one interest together with the Church-men, to support each other. For *Henry* the Fourth, and Arch-Bishop *Arundel*, meeting together under one condition of Banishment, become Consorts in sufferings, and Consorts in Honour; for Society begotten in trouble, is nourished in prosperity, by remembrance of mutual kindnesses in a necessitous Estate, which commonly are the more hearty, and more sensible, by how much other Contentments are more scant. But the Arch-Bishop had yet a further advantage upon the heart of *Henry* the Fourth, though he was no Man of power, yet he was of great interest; exceedingly beloved of the English Clergy, and the more for his Banishment sake: Now whatsoever he is, or hath, is the Kings, and the King is his; the sweet influence of the Arch-Bishop, and the Clergy enters into his very Soul; they are his dearly beloved, for the great Natural Love (as he says to the World) they bear to him; what he could he got, what he got, he gave to the Church: Thus the Family of *Lancaster* becoming a mighty support unto the Clergy, Roman as it was; they also became as stout maintainers of the crackt Title of that younger House: So was fulfilled the old Prophecy of the Oyl given to *Henry* the First, Duke of *Lancaster*, wherewith *Henry the Fourth was anointed, That Kings anointed with that Oyl, should be the Champions of the*

the Church. Now for the more particular clearing of this, we are to consider the Church absolutely, or in relation to the Political Government of the people. Concerning the latter, many things did befall, that were of a different peice to the rest, in regard that the Lords for the most part, were for the Clergy, and they for themselves; but the Commons began to be so well savoured with *Wickliffs* way, that they begin to bid defiance at the Clergies self-ends, and aims: and because they could not reach their heads, they drive home blows at their legs.

A Parliament is called, and because the King had heard somewhat, feared that the people were more learned than was meet for his purpose, and that the Parliament should be too wise; he therefore will have a Parliament, wherein the people should have no more Religion than to believe; nor Learning, than to understand his sense, nor wisdom than to take heed of a Negative Vote: But it befel otherwise, for though it was called the Lack-learning Parliament, yet had it skill enough to discern the Clergies inside, and Resolution enough to enter a second claim against the Clergies Temporalties, and taught the King a Lesson, *That the least understanding Parliaments, are not the best for his purpose:* For though the wisest Parliaments have the strongest sight, and can see further than the King would have them, yet they have also so much wisdom as to look to their own skins, and commonly are not so venturous, as to tell all the World what they know, or to act too much of that which they do understand. But this Parliament, whether wise or unwise, spake loud of the Clergies superfluous Riches, and the King's wants are parallel'd therewith, and that the Church-men may well spare enough to maintain fifteen Earls, fifteen hundred Knights, six thousand two hundred Esquires, and one hundred Hospitals more than were in his Kingdom.

This was a strong temptation to a needy and couragious Prince, but the Arch Bishop was at his elbow; the King tells the Commons, that the Norman and French Cells were in

his Predeceſſor's time ſeiſed under this colour, yet the Crown was not the richer thereby; he therefore reſolves rather to add to, than diminiſh any thing from, the maintenance of the Clergy.

Thus, as the King ſaid, he did, though he made bold with the Keys of St. *Peter*; for he could diſtinguiſh between his own Clergy, and the Roman. The people are herewith put to ſilence, yet harbour ſad conceits of the Clergy againſt a future time, which like a hidden fire, are not only preſerved, but encreaſed by continual occaſions, and more principally from the zeal of the Clergy, now growing fiery hot againſt the Lollards. For that not only the people, but the Nobles, yea, ſome of the Royal blood, were not altogether eſtranged from this new old way; whether it was ſucked from their Grandfather Duke *John*, or from a popular ſtrain, of which that houſe of *Lancaſter* had much experience, I determine not. Theſe were the Dukes of *Bedford* and *Gloceſter*; *Bedford* was firſt at the helm of Affairs at home, whilſt the King acted the Souldiers part in *France*, as ill conceited of by the Clergy, as they ſlighted by him. At a Convocation once aſſembled againſt the Lollards, the Duke ſent unto their Aſſembly his Dwarf, as a great Lollard, though he was a little Man, and he returned as he went, even as Catholick, as any of them all; *Non tam deſpectus à Clero, quam ipſe Clerum deſpiciens atque eludens.* This, and ſome other ſleights, the Clergy liked not, they therefore find a way to ſend him into *France*, to be a reſerve to his Brother: And in his Room ſteps forth *Humphrey* Duke of *Gloceſter*, that was no leſs cool for the Roman way than he. *Henry* the Fifth, was not more hearty in *Romes* behalf, for although he was loth to interrupt his Conqueſt abroad, with conteſts at home, yet he liked not of advancements from *Rome*; inſomuch, as perceiving the Biſhop of *Wincheſter*, to aſpire to a Cardinals Hat, he ſaid, that he would as well lay aſide his own Crown, as allow the Biſhop to take the Hat. Nor was he much truſted by the Clergy, who were willing he ſhould rather engage in the Wars with *France*, than mind the propoſals of

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of the Commons, concerning the Clergies Temporalties, which alſo was renewed in the Parliament in his days. Above all, as the *Lancaſtrian* Houſe loved to look to it's own, ſo eſpecially in relation to *Rome*, they were the more jealous, by how much it pretended upon them, for its favour done to their Houſe: And therefore *Henry* the Fourth the moſt obliged of all the reſt, looked to the Proviſors more ſtrictly than his Predeceſſors had; and not only confirmed all the Statutes concerning the ſame already made, but had alſo provided againſt proviſors of any annual Office, or profit, or of Bulls of Exemption from payment of Tythes, or from Obedience, Regular or Ordinary, and made them all puniſhable within the Statute; and further, made all Licenſes, and Pardons contrary thereto (granted by the King) void againſt the Incumbent, and gave damages to the Incumbent in ſuch vexations: for the former Laws had ſaved the right to the true patron, both againſt Pope, and King.

9 Hen. 4. c 8.

2 H. 4. c. 3, 4.
7 H. 4. c. 7, 8.
5 H. 5. c. 4.

And thus the Engliſh Kings were Servants to the Church of *England*, at the charges of *Rome*, whilſt the Popedom being now under a waſting and devouring Schiſm, was unable to help it ſelf, and ſo continued until the time of *Henry* the Sixth, at which time, the Clergy of *England*, got it ſelf under the power and ſhadow of a Protector, a kind of Creature, made up by a Pope and a King. This was the Biſhop of *Wincheſter*, ſo great a Man, both for Birth, parts of Nature, Riches, Spirit, and Place, as none before him ever had the like; for he was both Cardinal, Legate, and Chancellour of *England*; and had gotten to his aid, the Biſhop of *Bath*, to be Lord Treaſurer of *England*: Now comes the matter concerning proviſors once more to be revived.

Firſt, More craftily by collogueing with the Nobility, who now had the ſway in the King's Minority, but they would none: An Anſwer is given by the King, that he was too young to make alterations in matters of ſo high Concernment, yet he promiſed moderation. The Clergy are put to

ſilence

silence herewith, and so continue till the King was six years elder, and then with Money in one hand, and a petition in the other, they renew their Suit but in a more subtile way: For they would not pretend *Rome*, but the English Churches liberties; they would not move against the Statutes of *Præmuniri*, but to have them explained; it was not much they complained of, for it was but that one word, *Otherwhere*, which, say they, the Judges of the Common Law expound too largely, not only against the Jurisdiction of the Holy See, but against the Jurisdiction of the English Prelacy, which they never intended in the passing of those Laws: Their conclusion therefore is a prayer, *That the King will please to allow the Jurisdiction of their Ecclesiastical Courts, and that Prohibitions in such Cases, may be stopped.* But the King, either perceiving that the Authority of English Prelacy, was wholly dependant on the See of *Rome*, and acted either under the shadow Legatine, or at the best, sought an Independent power of their own: Or else the King doubting that the calling of one word of that Statute into question, that had continued so long, might endanger the whole Law into uncertainty, declined the matter, saving in the moderation of prohibitions. Thus the English Clergy are put to a retreat, from their reserve at *Rome*: all which they now well saw, yet it was hard to wean them: The Cardinal of *Winchester* was a great Man, and loth to lay down his power; but his own Tribe grew weary of him, and his power: For the greater some Church-men are, unless they be better than men, the inferiour, and better Church-men, are worse than men; at length therefore the Cardinal is Un-Legated, and that power conferred upon the Arch-Bishop of *Canterbury*, a Man formerly well approved, but by this very influence from *Rome*, rendred suspected; which he perceiving, protested against the Exercise of the Jurisdiction Legatine, without the King's allowance, and so mannerly crept into the Chair.

16 *Rich.* 2. *c.* 5. *Antiq. Brit.*

The English Kings and Clergy having thus attained the right discerning of each other, begin to take up a new way of poli-

policy; which was to hold nothing of the Popedom, but the form of Worſhip, and Diſcipline; but as touching Juriſdiction, they held it a high point of wiſdom, either to fetch it nigh at home, or to be ſilent in the matter; having now found a main difference between the Pope's will, and the Church-Law, and therefore, as formerly, the Convocation and Parliament joyned in excluding of Foraigners from Church livings, under the Notion of Intelligencers to enemies abroad: So neither now will they allow any proviſions for Engliſh-men; and upon this ground the Dean and Chapter of *York* refuſed to admit the Biſhop of *Lincoln*, to the See of *York*, although aſſigned he was thereto by Pope *Martin*, and he the Darling of Nations, being by joynt conſent advanced to the Tripple-Crown, that had been formerly trippled amongſt three Popes, and troubled all *Europe*: And whereas during the Tripapality, much Money had been levyed here in *England*, to ſerve for the recovery of the Popedom, to one of Engliſh Intereſt: Now by joynt conſent the ſame is ſeized upon and ſtopped, as fewel from the fire, and ſpent by *Henry* the Fifth, in the recovery of a Kingdom in *France*, that ſhould have been employed in recovery of a Popedom at *Rome*: theſe things concurred to give a wound to the Popedom, that was never cured to this day. *Holl.*

Nevertheleſs, the Engliſh Clergy was no loſer by all this, but gained in the whole ſum: For as it made them more depending on the Crown, ſo it made the Crown more faſt to them, from which they had received more real immunities and power, than the Pope ever did, or was able to give them, and might expect to receive many more. What perſonal reſpects theſe three Kings ſhewed them, hath been already touched: *Henry* the Sixth added one favour, which made all the reſt more conſiderable: Hitherto they had uſed to meet in Convocation, as upon the intereſt of *Rome*, and little notice was taken of them; now the Nation owns them, and in ſome reſpects their work, and it is granted, That the Clerks of Convocation called by the King's Writ, and their Menial Servants

8 *H.* 6. c. 2. Servants ſhall have ſuch priviledge, in coming, tarrying, and going, as the Members of the Parliament have: So as though they be not Members, yet they are as Members, if they aſſemble by the King's Writ, and not only by the power of the Legate or Metropolitan. The Antiquity of this Court is great, yet not ſo great as hath been ſuppoſed; nor is it that Court of the Ordinary called the Church Gemot, mentioned in the Laws of *Henry* the Firſt, as not only the works thereof, therein ſet down, do ſufficiently declare, but alſo it's evident, that in *Henry* the Second's days, the Grand Councils of this Kingdom were joyntly mixed both of Clergy and Laity, nor could the Clergy ſhut the Laity from their Councils, till about the times of *Richard* the Firſt, or King *John*. From which time forward the Laity were ſo far from protecting of them (till theſe times now in hand) that all their care was to keep them from violating the liberty of the people. That they were many times notwithſtanding called together by the King's Writ before theſe times, hath alſo been cleared by another Pen. That their work at ſuch times was to adviſe concerning ſuch matters as ſhould be propounded to them by the King in Parliament, their ſummons do ſhew; the particulars whereof, for the moſt part, concerned ſupplies of Money from the Churchmen, and yet ſometimes matters of great moment were debated therein: as in a Convocation ſummoned by *Henry* the Fifth in his ninth year, the preheminence of Pope *Eugenius* above the Council of *Bazil* was debated, and as much as they could, determined the ſame: the credit of their deciſions in former time, I believe was not much amongſt the people, becauſe the Men were looked upon with an evil eye: Now that the Parliament ſeemeth to own them in their way, and to protect them; their determinations are ſomewhat: The Church-men eſpy their opportunity, and whilſt the benevolent influence of the State is in its firſt heat, they improve it in this manner. The times were now come about wherein light began to ſpring forth, conſcience to beſtir it ſelf, and men to ſtudy the Scriptures: This was imputed to the idleneſs and careleſneſs of the Clergy, who ſuffered the minds of young

4 *Inſtit.* c. 74.

Mr. *Will. Prynne.*

Scholars

Scholars to luxuriate into Errours of Divinity, for want of putting them on to other Learning, and gave no encouragement to ſtudies of humane Literature, by preferring thoſe that were deſerving. The Convocation taking this into conſideration, do decree, that no perſon ſhould exerciſe any juriſdiction in any Office, as Vicar-general, Commiſſary, or Official, or otherwiſe, unleſs he ſhall firſt in the Univerſity have taken degrees in the Civil or Canon Law: A ſhrewd trick this was to ſtop the growth of the ſtudy of Divinity, and *Wickliff*'s way: and to imbelliſh Mens minds with a kind of Learning that may gain them preferment, or at leaſt an opinion of abilities beyond the common ſtrain, and dangerous to be medled with, like ſome Gallants that wear Swords as Badges of Honour, and to bid Men beware, becauſe they poſſibly may ſtrike, though in their own perſons they may be very Cowards; and no leſs miſchievouſly intended was this againſt the rugged Common Law, a Rule ſo nigh allied to the Goſpel way, as it favoureth Liberty, and ſo far eſtranged from the way of the Civil and Canon Law, as there is no hope of accomodation till Chriſt and Anti-Chriſt have fought the field. *Antiq. Brit.*

Thus much of the Church of *England*, in relation to the State, now as it is abſolutely conſidered in regard of the ſeveral degrees of perſons therein. Although theſe three Kings were much indeared to the Engliſh Clergy; yet the difference between the Laity and them growing high, the King's principal care is now, to keep an even hand between them both, for he that will back two Horſes at once, muſt keep them even, or put his joynts to the adventure: Firſt, *Henry* the Fourth granteth, that no more ſhall be paid to *Rome* for the firſt-fruits of Arch Biſhops and Biſhops, than hath been anciently uſed. The occaſion hereof was to prevent the horrible miſchief and damnable cuſtom of *Rome*; for ſuch are the very words of that Statute, unto which the Clergy gave their Vote, if not the firſt Vote; and therefore certainly did neither believe, nor honour that infallible Chair as their own Mother; nor did they bear her yoke further than their own benefit, and reaſon of State did require; for though the immediate *6 Hen. 4. c. 1.*

 benefit

benefit of this Law did descend upon the Prelacy; yet it also much concerned the interest, both of the honour and benefit of the Nation, that the Clergy should not be at the Pope's pleasure to Tax and Assess as he thought good.

2 *H.* 5. *c.* 1. Secondly, *Henry* the Fifth added unto the Prelacy, some kind of encrease, both of Honour, and Power, *Viz.* To visit Hospitals that were not of the King's own foundation, and to reform abuses there; for the Patrons either had no power to punish, or will or care to reform them; and thus upon the point, although they lost a right, yet they gained ease.

3 *H.* 5. *c.* 8. Thirdly, The same King confirmed by a Statute unto Ordinaries, the Cognisance of accounts of Executors, for their Testators Estates, which formerly was granted by the Canon Law, but they wanted power to execute, and a right to have and receive: In all these the Clergy or Prelacy were the immediate gainers. In as many other things the people were made gainers, and yet the Clergy were no losers, otherwise than (like the Kite) that prey which was none of their own.

First, They refused formerly to grant copies of Libels, either thereby to hinder the course of prohibitions, or to make the copies the more dear, and Money more cheap with them. *Henry* the Fifth, finding this a grievance to the people, passeth a Law, that all Ordinaries shall grant the Copies of Libels at such time as by Law they are grantable.

2 *H.* 5. *Stat.* 2. *cap.* 1. Secondly, As the probate of Wills had anciently belonged to the Ordinary, by the Canon Law, and formerly also confirmed to them by the Parliament, so it also regulated and settled the Fees for such Service: But the Clergy having been ever under the nouriture of their Mother *Rome*, that loved to exceed, they likewise accounted it their liberty to take what they could get, but the nigher they come to engage with Kings in their Government according to Law, the more reformed they grow: Formerly *Edward* the Third had settled their Fees, but they would not hold to the rule, now the Law is doubled by *Henry* the Fifth, with a penalty of treble damages against Delinquents. Furthermore, the very Priests could not

not contain their *Pater-Noſters*, *Requiems*, *Maſſes*, and ſuch wares they had engroſſed, and ſet thereof what price they pleaſed: The Market was riſen to that height, that *Edward* the Third undertook to ſet a rate upon thoſe commodities, but that alſo would not hold long; *Henry* the Fifth he ſets a certain ſtipend ſomewhat more than *Edward* the Third had done, and yet leſs than the Prieſts had formerly. 5 *H.* 5. *Stat.* 2. *cap.* 8. 2 *H.* 5. *Stat.* 2. *cap.* 2.

Laſtly, Some Laws were made, wherein the Common-Wealth gained, and the Church were loſers. Firſt, Whereas the Church-men formerly held all holy things proper and peculiar to their own Cogniſance, eſpecially ſuch as concerned the Worſhip of God, the Parliament now began to be bold with that, and never asked leave. It had now for a long time, even ſince the Saxon times, been the unhappy condition of this Church of *England* amongſt others, to decay continually in Piety and right Devotion, but through the light that now revived, and God's goodneſs, it in theſe times came to paſs, that the people did entertain ſome ſenſe of their duty towards God, more than formerly, and begin to quarrel the abuſes done to the Lord's Day, in the manner of the keeping thereof: *London* hath the honour for beginning this Reformation by an Act of their Common Council. The Parliament within ſeven years after that, engage the whole Kingdom in that ſervice (though therewith alſo are adjoyned other holy Feaſts then holden) And all Fairs and Markets are enjoyned to ceaſe on that day, under pain of forfeiture of Goods expoſed to ſale, excepting Victual, and excepting the four Sundays in Harveſt. And thus though places had their conſecration allowed by the Parliament, and immunity from trading in Fairs, and Markets, by the ſpace of a hundred and ſixty years before this time, yet that time which God by his own Law had reſerved to his own ſelf, never came under regard to be allowed till now, and yet not by the motion of the Clergy, nor by their furtherance; for by their thruſting in the Holy-days, they made them equal with the Lords-day, and in Harveſt time ſuperiour, by preſerving them in force, when as the Lords-days were ſet aſide: So God had ſomewhat of theſe Men, but the Pope 27 *H.* 6. *c.* 5.

more. Secondly, As the Church-men loſt in the former, ſo the Prelacy in this that follows.

The Prelates had long ſince obtained the Trial of Baſtardy; and therein could ſtrain themſelves ſo far, as to put the Caſe of inheritance into danger, where the point otherwiſe was clear enough; and this grew to that height that it endangered the diſinheriting of the Heirs of the Earl of *Kent*. It is therefore now provided, that before the Ordinary in ſuch Caſes proceed to trial, Proclamations ſhall be made in Chancery, to ſummon all pretenders of Intereſts or Titles to come before the Ordinary, to make their Allegations, and all Trials of Baſtardy otherwiſe made ſhall be void; ſo as whatever the Canon did, the Parliament would not truſt to the Ordinaries Summons, nor allow of their power in any other manner, than the Parliament thought meet. One thing more remaineth, wherein the true Church of Chriſt ſeemed to loſe and yet gained; and the Clergy joyning with the King ſeemed to gain and yet loſt; this was the point of worſhip, which had long ſtumbled the minds of the people, and was now grown to that ſtrength, that nothing but an Act of Parliament can keep it under. This opinion concerning worſhip, was at the firſt ſo young, that it was not yet baptized with any proper name, but called, Opinion contrary to the Church determinations, or Catholick Faith. And againſt this the Clergy now ſtormed, more than ever formerly, becauſe it was grown to ſuch a height as if it meaned to over-top theirs. To this end they procure an Act to paſs.

9 H. 6. c. 11.

That all Preachers, Teachers, Writers, School-Maſters, Favourers, or notoriouſly defamed Perſons, for the maintenance of ſuch opinions, ſhall be (upon conviction before the Ordinary, according to the Canons) impriſoned in the Dioceſans Priſon, Fined according to the Dioceſans diſcretion.

2 H. 4. c. 15.

If upon Conviction, he ſhall not abjure, or ſhall relapſe, he ſhall be delivereed unto the Secular Power, and be burned.

And that Preachers without Licenſe of the Dioceſan, ſhould be reſtrained.

Con-

Concerning which Law, I shall first shew what change in the Laws of this Kingdom was endeavoured, and what was really effected.

First, It is an undeniable ground, that no Freeman can be put to answer before any Judge, but upon presentment, or other matter of Record foregoing, and by due Process of Law; and yet it had been ruled, that strong presumption, and complaint of credit after it is entred, is sufficient Record, to ground proceedings in this Case; to attach the party to Answer. But by this Law a Trial is introduced, that neither resteth upon any peremptory accusation, or proof of witness, but meerly upon Inquisition, upon the Oath and Conscience of the party suspected; which in the latter days hath been called the Trial upon the Oath, *Ex Officio*; for such was the Trial allowed by the Canon in these times; as appears in the Constitutions of *Otho*, and the Decrees of the Arch-Bishop *Boniface*, by whom it was endeavoured to be obtruded upon the Laity, about the times of *Henry* the Third, or *Edward* the First; but even the Clergy then withstood it, as *Lindwood* confesseth. And *Otho* in his very Constitution, doth hold this forth by that clause of his, *Non obstante obtenta consuetudine.*

42 *E.* 3. *c.* 3.

10 *Hen.* 7. *fol.* 17.

Otho de Fur. Fur. Calumn.

Lind. de Jure Furan. 2.

Secondly, This Law doth endeavour to introduce a new Judge, with a power to Fine and Imprison according to discretion, and a prison allowed to him as his own peculiar, and yet the Writ, *De cautione admittenda*, still held its power, to regulate that discretion as formerly it had done; which by the way may render the power of this Law suspicious.

Thirdly, The Clergy are not content to have the Estates, and Liberties of the bodies of the people at their discretion; but they must also have their lives, although no Freeman's life could by the Fundamental Laws of this Kingdom, come to question, but by the judgement of his Peers; nor could the Clergy by their own Canons *intercesse sanguine*, *Viz. They cannot put any Man to death, but by this Law they may send any Man to death by a Sentence, as sure as death, Tradatur*

datur potestati seculari: And such a death, not as the Civil Magistrate is wont to execute by a speedy parting of the Soul from the Body, by loss of blood, stop of breath, or such like; but the Clergy must have blood, flesh, bones, and life and all, even to the edge of non-entity it self, or they are not satisfied: And thus the Writ, *De comburendo Hæretico*, entred into the World. True it is, that some sparks of this fire are found in former times, and *Bracton* toucheth upon such a Law, in Case of a Clerk convict for Apostacy, *Primo degradetur, & post per manum Laicalem Comburatur*, which was indeed the Canon, and that by his own Confession; for it is grounded upon one, *Secundum quod accidit*, in the Synod at *Oxford*, under Arch-Bishop *Becket*: but that Case concerneth a Clerk, who by his profession hath put himself under the Law of the Canon, and it was only in Case of Apostacy, himself being turned Jew; and this also done upon a sudden pang of zeal and power of an Arch-Bishop, that would know no Peer; nor do we find any second to this Precedent by the space of two hundred years next ensuing; neither doth the decree of Arch-Bishop *Peckham*, who was not long after *Becket*, treating about Apostacy in Lay-men, mention any other punishment than that they are to be reclaimed, *Per censuras Ecclesiasticas*; nor yet that of Arch-Bishop *Arundel*, amongst the Constitutions at *Oxford*, not long before this Statute, who treating about the crime of Heresie, he lays the penalty upon forfeiture of goods, with a *Præsertim*, as if it were the grand punishment: And *Lindwood* in his gloss upon that place, setting down the Censures against Heresie, *Hodie sunt* (saith he) *damnandi ad mortem*, as if it were otherwise but as yesterday.

Lind. lib. 5. de Apostat.

Lind. lib. 5. de Heret. fol. 159.

Fourthly, the next endeavour is to bring the cognisance of all, wholly to the *Ecclesiastical Court*, without further Appeal; for so the words concerning Conviction of Heresie are: *Whereupon evidence shall be given to the Diocesan of the same place, or his Ordinary in that behalf.*

These changes, I say, were endeavoured to be brought upon the Government of this Kingdom; and yet the Law for all this, suffered no change, nor did the House of Commons (however

ever the name is thruſt into the Engliſh Ordinary Print) ever yield unto the paſſing of the ſame, but in the Parliament next enſuing, complained thereof, and proteſted they would not be bound by ſuch Laws, whereto the Houſe of Commons had not given their conſent; and this daſhed the Law quite out of countenance (although it holds the place ſtill amongſt the number) for within four years after, the Clergy bring in another Bill of the ſame nature in general, though varying in ſome particulars, but the ſame was again rejected. 8 H. 6.

All the ſtrength therefore of this Law, reſteth upon the King and Houſe of Lords, engaged by the Clergy, to whom they truſted for their Religion (for Book-learning was with them of ſmall account) and no leſs by the King, who knew no better way to give them content, that gave him ſo much as to ſet the Crown upon his Head, nor to diſcharge his Royal Word, paſſed by the Earls of *Northumberland* and *Weſtmerland*, in his behalf unto the Convocation, *Viz. That they were ſent to declare the King's good Will to the Clergy, and Church Liberties, and that he was reſolved to defend all the Liberties of the Church by his Kingly Power, and to puniſh Hereticks, and the Churches Enemies in ſuch manner as the Clergy ſhould think meet; and therefore deſired their daily Prayers for his own, and the Kingdoms ſafety.* And yet for all this, the people were not of this mind; no ſmall part of the Kingdom being overſpread with theſe Opinions. *Antiq. Brit.* 273. *Walſingham, Ypo. Neuſtr.* 157.

After *Henry* the Fourth, comes *Henry* the Fifth, and he alſo makes another aſſay; the former opinions then known only by the general names of Hereſie, are now baptized, *by the new name of Lollardry*, and grown ſo overſpreading, that all the troubles of theſe times are ſtill imputed to them. It was indeed the Devils old and common trick, thus to inrage earthly powers againſt theſe Men, although he be hereby but an inſtrument in the hand of the Chief Builder, that in laying a ſure foundation, doth as well ram down, as raiſe up; for the malice of theſe Men made the people of God to multiply: *Henry* the Fifth, alſo publiſhed a Law to this ſame.

That

2 H. 5. c. 7. *That all Persons in place of Government, shall swear to use their diligence, to destroy all Heresies and Errors, called* Lollardries.

That all Lollards *convict by the Clergy, (left to the secular power, according to the Laws of Holy Church) shall forfeit their Lands and Tenements to their Lords: And the King to have the year, and day, and Waste, and all his Goods and Chattels.*

If the Lord be the Ordinary, the King shall have all.

No forfeiture to be, till the Delinquent be dead.

They shall be found by Indictment before the Justices of the Peace.

This Indictment being found, shall be sent to the Ordinary with the Prisoner.

The Indictment shall not be for Evidence, *but only for Information.*

These are the principal things contained in this Law, which by the manner of the composure, seemeth to be of an uncertain colour, neither made by the Clergy, nor Laity, but spoiled between them both. The intent thereof seemeth to be principally to draw on the House of Commons to pass the Law, under hope of gain by the forfeitures; for the penalty is like that of Felony, though the crime be not expresly declared to be Felony. But the intent fell short in event.

For First, The nature of the Crime is not defined, nor declared by any Law, and therefore can no Man by Indictment be found to be such.

Secondly, No penalty of death, hath been by any former, or by this Law determined upon such as are guilty, for it's not enacted by any Law, that such persons shall be delivered to the Secular power, *&c.*

Thirdly, this Statute determining the forfeiture to be not till death, and neither that, nor any other Law of this Kingdom determining death; then is no forfeiture determined.

Fourthly, Though this Law taketh it for granted, That Heresie and Errours belong to Ecclesiastical Cognisance, yet the same

same allows of no further proceedings, than Ecclesiastical censures.

Lastly, By this Law, there can be no proceeding, but in case of Indictment, (for otherwise, without Record, no forfeiture can be) therefore, where no Indictment is, there is no forfeiture. In all which regards, it's evident that the Clergy could by this Law neither get fat nor blood; and therefore at their Convocation in the next year following, they took another course, and ordered that three in every Parish, should make presentment upon Oath, of such persons as are defamed for Hereticks, and the truth so far as they can learn; which puts me in mind of a presentment, that I have seen by some of St. *Mary Overies* in those times: *Item, we saine, that* John Stevens *is a Man we cannot tell what to make of him, and that he hath Books we know not what they are*: This new course shews plainly, that the former held not force as they intended it. So God blasted the practices of the Clergy at this time also, rendring this Law immaterial that had the form, as the other missed in the form, and had the matter. *Fox. Marturol.* 589.

CHAP. XVIII.

Of the Court of Chancery.

IT often befalls in State-Affairs, that extraordinary Exigencies require extraordinary remedies, which having once gotten footing, are not eafily laid afide, efpecially if they be expedient for Prerogative. The Privy Council in the Star-Chamber, pretending default of the Common Law, both in fpeed, and fe verity, in Cafes whereby the State is endangered: The Chancery pretends default by the Common Law in point of equity, and moderation: The people taken with thefe pretences, make that Rod more heavy, which themfelves had already complained of: What the Chancery was in times paft hath been already fhewed; ftill it is in the growing and gaining hand.

4 H. 4. c 8. Firft, In the Judicatory power it prevailed in relation to the Exchequer, exercifing a kind of power to furvey the proceedings thereof, in Cafes of Commiffioners diftrained to account, for Commiffions executed, or not executed; for it was no eafie matter to execute Commiffions from the Exchequer in thofe times of parties; nor were Men willing with fuch unwelcome occafions, between Friends and Neighbours; and it may be, they grew weary of embroiling themfelves one againft another, and of being Inftruments of the violent countermotions of Princes, and great Men.

Secondly, It gained alfo upon the Admiralty, which by former Laws had Juriſdiction in all Cafes incident upon the great Sea; but now either through neglect of the Admiral, or the evil of the times, occafioning Places to grow Epidemical the ill government upon the Sea became dangerous to the State, trenching upon the Truce made between this and other Nations.

2 H. 4. c. For a remedy whereof, firft Conſervators of the Truce were

settled in every Port, who had power committed to them to punish Delinquents against the publick Truce, both by Indictment at the King's suit, and according to the course of the Admiralty by complaint, saving matters of death to the Cognisance of the Admiral. But this was soon found defective, for Justice done in the dark, is many times more respective, and less respected, and therefore within a few years, it is provided, that Offendors against the King's Truce upon the Sea, or in any of the Ports, shall be proceeded against in the Chancery, before the Chancellour, who hath power given him, calling to his Assistance some of the Judges to execute the Statute of 2 *H.* 5. foregoing, by a handsome contrivance: For that Statute was once and again suspended for the rigour that was used by the former conservators, who being borderers upon the Sea, for their own peace, spared as few as they could, which had so discouraged the Seamen, that the Kingdom had been almost utterly bereaved of its strength at Sea. Nevertheless, all this while, these Laws were but penal, and not remedial, for the parties wronged: And therefore another Law is made, to give the Chancellour and Judges power to make restitution and reparation.

2 6 *H.* 6. *c.* 2.

14 *H.* 6. *c.* 8
20 *H.* 6. *c.* 11.

31 *H.* 6. *c.* 4.

Thirdly, the Chancery gained upon the Ecclesiastical Court: for whereas by the Canon, the Church-men were to be judged by their Superiours, according to Ecclesiastical and Ordinary Jurisdiction; and the iniquity of the times was again returned to that height, that Parents could not enjoy their own Children; but the little ones were allured, stoli'n away, and detained in Cloysters; nor did the Church-men afford remedy in such cases: A Law was made, that upon complaint hereof made to the Chancellour, the Provincial should be by him sent for, and punished according to his discretion.

4 *H.* 4. *c.* 12.

Lastly, The Chancery encroached upon the Common Law: For whereas the stirs between the two Houses of *York* and *Lancaster* began to rise, Men made their dwellings in places of security, and strength; Women likewise and other persons flying thither for refuge; especially, such of them as had most to lose; these were contrary to the Law

of common honesty, urged to engage their Estates unto the desires of such, to whom they had fled for Refuge, and sometimes compelled to marry, before they could gain their liberty. It was now provided that all such complaints should be heard and determined by the Chancellour.

31 *H.* 6. *c.* 9.

Secondly, As touching the Ministerial power of the Chancery, this likewise was enlarged in making of Process to compel appearance in cases of Forcible Entries, Murders, Manslaughters, Robberies, Batteries, Assemblies in nature of Insurrections, Riots, and Plunder, committed by Servants upon their Masters goods, before their Masters death, and such like offences now grown common, and in need of sudden remedy.

4 *H.* 4. *c.* 8.
13 *H* 4. *c.* 7.
2 *H.* 5. *c.* 9.

Thus as the work and power of the Chancery grew, so did the Place and Person of the Chancellour grow more considerable, raised now from being the King's Secretary, (for no better was he in former times) to be the Kingdoms Judge, and of such Trust, that although the King might make Election of his own Secretary, yet the Parliament would first know, and allow him that must be trusted with the power over the Estates of so many of the people: And therefore did in these times, both place, and displace him as they saw expedient.

In a word, he is become the Kingdoms Darling, and might be more bold with the Common Law, than any of his Peers.

2 *H.* 4. *c.* 11.

CHAP.

CHAP. XIX.

Of the Courts of Crown-Pleas, and Common Law.

AS the Chancery on the one side did swell and encrease, so was the King's Bench in an Ebb; the Council Table in the Star-Chamber on the one side, and the *Itinerant* Courts in the Countrey intercepted, and drew away much to their own shares: Making themselves fat, the King's Bench lean, and the Rural Courts for Crown-Pleas almost to starve. The Crown-Pleas formerly had been determinable in the King's Bench, Gaol-delivery, *Oyer* and *Terminer*, and many of them by Justices of the Peace, Coroners and Sheriff. The Gaol-Delivery was afterwards united to the Judges of Assize, and if one of them were a Clergy-man, then to the other, and chief Men of the County. This was useful for the publick, but not beneficial for some Men; and therefore they laboured for Commissions, especially directed to parties, that they thought would partake; but these were found soon to be dangerous, soon taken away, and the Gaol-delivery restored to the Judges of Assize, as formerly. The Commissions of *Oyer* and *Terminer* were sued forth upon extraordinary emergencies, and offences, wherein the State was much concerned for speedy Execution. In former times both these and Gaol-deliveries were but rarely had, and then granted unto some, that perchance knew more of the Case, than before hand was meet to be known. *Edward* the Third amended this Errour, and ordered that no Commissions of *Oyer* and *Terminer* should issue forth, but unto Commissioners named by the Court, and not by the party complaining. But the Judges of Assize are now in the growing hand, both for Honour, Use, and Power, the rather, because their persons are of high repute in the Benches at *Westminster*, which are the Master-pieces of Judicature, and their *Iters* are constant and ordinary: Nevertheless, the

2 *E.* 3. *cap.* 2.

34 *E.* 3. *c.* 1.

the Judges of Aſſize, though they have the Gaol-delivery annexed to them, yet have they not that abſolute power of the King's Bench; but are ſtill under the rule of their Commiſſion, which is not alterable, but by Parliament, and which by it was altered, by way of adding of new powers as new crimes aroſe, that required the eye of the State to provide, and ſo the Judges of Aſſize by degrees grew to be the ordinary Adminiſtrators of Juſtice throughout the Kingdom, yet holding ſtill forth to them a limited power to hear and determine in ſome
11 *H.* 4 *c.* 1. Caſes, but in others only to enquire, and certifie, as in the caſe of falſe returns by the Sheriff of perſons elected for the Parliament: And alſo in caſes concerning the Statutes of Labourers, and unlawful games, and paſtimes; in which caſe
2 *H.* 4. *c.* 21. the Certificate is to be made to the Chancellor: And alſo in
13 *H* 6 *c.* 3. caſes concerning Liveries contrary to the Statutes, wherein the Certificate is to be made to the King's Bench; which power in this laſt caſe, continued in that manner by the ſpace of thirty
8 *Hen.* 6. *c* 4. years; and then by another Statute, they had the power to
4 *H.* 5. *c.* 7. determine ſuch caſes before themſelves: In like manner they had power to hear and determine caſes of falſhood, in counterfeiting and corrupting of Money, by waſhing, clipping, *&c.* And alſo defaults committed by Sheriffs, Bailiffs, and their Offi-
8 *H* 6. *c* 9. cers againſt the Statutes of Forcible Entries, and of wearing of Liveries, as aforeſaid.

Theſe were ſigns of much confidence and truſt in them, and yet notwithſtanding in theſe, nor none of theſe, were the penalties by Fine left to the Arbitry of the Judges; no, nor to the Juſtices of the King's Bench, but were by the very Letter
13 *H.* 4 *c.* 2. of the Law determined. Nor would the Parliament truſt theſe Men with doing Juſtice in the caſes aforeſaid, in their own Counties where they dwelled, nor did it think expedient to allow the chief Juſtice of the King's Bench unto that Service in any of them all, but only once in the County of *Lancaſter*, and then only at the King's pleaſure; otherwiſe, it was to be as was uſed by the ſpace of one hundred years foregoing;
50 *E.* 3. *n.* 113. poſſibly becauſe his power was too great to be truſted amongſt
8 *Rich.* 2. *c.* 2. the people.

Laſtly,

Laſtly, The Judges of *Niſi Prius* were anciently made by *Edward* the Firſt, by whom alſo the Aſſizes were ſettled at certain times of the year, and afterwards by the Statute of *York*, the *Niſi Prius* in ſmaller caſes was granted before one Juſtice of the Bench where the plea dependeth, and one ſubſtantial Man of the County; but thoſe of greater concernment were to be had before two Juſtices of that Bench, or in caſe they were wanting, then before Juſtices of the other Bench, or in default of them, before the chief Baron, if he were a Man of Law, and in default of that, before the Judges of Aſſize. Therefore in thoſe days, the Juſtices of the Benches in their *Iters* in the Counties, divided in their power; Some being for Aſſizes, others for *Niſi Prius*; and in ſome times and caſes, ſome were for both: For in thoſe times of *Edward* the Third, Judges of Aſſize had power to enquire in ſome matters that concerned the Crown, or to try *Niſi Prius*, nor were theſe powers united, till in *Henry* the Sixth's time, Juſtices of *Niſi Prius* had the power of *Oyer* and *Terminer* annexed to them, in all caſes of Felony, and Treaſon.

Cap. c 30.

12 *E.* 2 c 3.

14 *E.* c 5.

4 *E.* 3. c. 12.

What was formerly provided by *Edward* the Third and *Richard* the Second for inſtruction to theſe Judges, and to bind them thereto by ſolemn Oath, I ſhall not particularly mention, but ſhall leave the conſideration of the Original of the whole Judicature of this Nation unto the Readers obſervation upon the premiſes.

2 *E.* 3. c. 8.
7 *R.* 2. c. 14
11 *R.* 2. c. 1.
12 *R.* 2. c. 6.
1 *H.* 4. c. 11.

CHAP. XX.

Concerning Sheriffs.

HEnry the Fourth, after a ſmall reſt in his Throne, though he always ſate looſe, ſought after the civil Peace, as the corner Stone of his ſubſiſtence; and that by a way of Juſtice, which found more acceptance with the vulgar, than the common Education of the greater number in theſe times could promiſe; for the worſt of Men cannot endure to ſuffer injuſtice, though themſelves will do it. Now becauſe where Kings are reputed to be the Fountain and Life of Juſtice, Sheriffs may be reputed to be the breath thereof; and by their irregularities, do render the Government of the King, as loathſome, as unſavoury breath doth the perſon whoſe it is: Therefore *Henry* the Fourth choſe rather to be a loſer in his Farm-Rents of the Sheriff-wicks, than to occaſion the Sheriffs to ſave their bargains by oppreſſion: And to this end he took away the courſe of forming of Sheriff-wicks, and made the Sheriffs bare accountants for the Annual profits; and as touching the caſual profits the Sheriff diſcharged himſelf upon Oath. This was a good ſecurity to the King, but yet the people was not herewith ſatisfied; For though the Sheriffs might not take to Farm, yet what they had, they might let to Farm; And then wherein are the people the better for theſe Laws? Seeing it's all one for them to be oppreſſed by the Sheriff immediately, and by the Proxy.

1 *H.* 4. *c.* 11.

4 *H.* 5. *c.* 2.

For preventing of this inconvenience, another Law is made; *That the Sheriff ſhall not let his Bailywick to Farm, nor be Non-reſident, and to this he muſt bind himſelf by Oath*: So as now the Sheriff is double girt, and may be fairly ridden, without danger to the King or people. But Men ride Horſes for eaſe, and pleaſure, and he that muſt bend his mind always to watch his Horſes motion, will chooſe rather to go on Foot; and therefore *Henry*

4 *H.* 4 *c.* 5.

Henry the Fifth renewed the Law of *Richard* the Second, that Sheriffs shall be but for one year, and then not to be chosen again, nor serve for three years next following. This order continued for the space of eight years, within which time, War and Pestilence had consumed so many of the richer sort of people, that a Dispensation is granted, that Sheriffs may continue in their places for four years. And it was above twenty years after, e're the Stock was recruited again; after which time, the substance of the former Statutes of *Edward* the Third, *Richard* the Second, and 1 *Henry* the Fifth is revived again, with a penalty upon the Sheriff, his Deputy, or Clerk, that shall execute that place above one year; so the custom of holding that Office ten or twelve years, by occasion of the Dispensation for four years was laid aside: But the Cure would never be perfect, so long as Sheriffs held by Inheritance: For it was easie to find new Deputies, but not to lay down old Customs, nor could it be lasting, unless the penalties also had been annexed to the particular crimes.

1 *Hen. 5. c. 4.*

2 *H. 6. c. 8.*

For a Sheriff before he is a year old, by experience formerly had, becomes too cunning for all these Laws; and therefore Laws are made also against the ordinary corruption of these places, such as are extorting of Fees, false making of Juries, false returns of Writs, *&c.* and damages in such cases given to the party wronged; and when all is done, he is not trusted wich taking of Indictments. Thus with much ado, a Sheriff is made a tolerable Officer, and his place by Degrees so hedged in, that what was in former times hard to pluck up, is now become hard to set.

4 *H. 6. c. 1. 6. cap. 4. 15. cap. 5 18. c. 14. 23. cap. 10. 28 E. 3. c. ult.*

CHAP. XXI.

Of Justices and Laws concerning the Peace.

THe faint Title of *Henry* the Fourth to the Crown, made him ever tender of the Civil Peace, without breach whereof, he was sure to be quiet in the Throne; he undertook not this work by any superlative power, from and by himself, but useth the help of the Parliament, and Laws, wherein he was industrious; pretending love of Unity amongst his people, which nevertheless he liked not, unless in order to quiet between himself and them. The former way of Justices of Peace he followed close, reducing the persons to their ancient qualifications. The most sufficient persons, Inhabitants in the County, worth at least twenty pound yearly, unless they be Lawyers, or such as are Justices in Corporations; nor is the King troubled or trusted with the naming or electing of these Men, but the Chancellour, or the King's Council; so as now by Law the King can neither be Justice, nor make Justice *Jure proprio*, but as his interest with the Council is more or less prevalent, and that power that first gave it to the Crown, the same power took it away, or imparted, and placed it elsewhere. But as touching the Work or Power of the Justices themselves, it grew exceedingly, much whereof was only of enquiry and to make Certificates, as of Heresie, Treason, Falshood of Sheriffs, *&c.* But more of *Oyer* and *Terminer*, as in case of Watches, deceitfulness in Trades; as of making arrow-heads, guilding of Metal, tanning of Leather, imbasing of Silver, selling of waxen Images and Pictures, *&c.* for the superstition of these times was such, as these petty gods were not set at so high a price by the Seller, but a higher price by the Buyer; the Parliament therefore set a truer value of them, *Viz.* For the Wax, so much as the Wax is worth by weight, and but four pence for the god-head; so as it seems, the Parliament was not very superstitious in their House, whatever they.

1 *Hen.* 5. *c.* 10.
18 *H.* 6. *c.* 11
2 *H* 5. *Stat.* 2. *cap.* 8.
2 *H.* 5. *c.* 4.
3. *cap* 7.
4 *H.* 6. *c.* 1.
5 *H.* 4. *c.* 3.
7 *H.* 4. *c.* 7.
8 *H.* 5. *c.* 3.
2 *H.* 6. *c.* 7. 14.

they were at Church. Furthermore, the Justices of the Peace had power to punish deceit in Measures, Weights, Forcible Entries, and Detainers. In many of which Cases, the penalty being Fine and Imprisonment, became a snare to many of the Justices, especially such as were of the greater and higher rank, who having Castles of their own, under colour of Justice imprisoned Delinquents in their own Castles, and ransomed them at their own pleasure; which proved a great oppression to the people, and occasioned a Law that no Justice should commit any Delinquent to other than the County Gaol, saving Franchises to the Lords. Those times are happy when Justice waits not altogether at Court, but grows up in the Fields, and Justices of Peace, as the King's Arms upon the Royal Mace, are terrible only to the bad, and not as they are pictured before an Ale-house door, to invite Men to transgress.

1 *H.* 5. *c.* 10. 9 *Stat.* 2 *c.* 8 2 *H.* 6. *c.* 11 11 *H.* 6 *c.* 8 13 *H.* 4. *c.* 7. & 2. 4 *H.* 5. *c.* 8. 5 *H.* 4. *c.* 10.

The Laws for the preservation of the peace concern either punishment of Crimes committed, or prevention of them from being committed: There is a succession of crimes, as of Men and Ages, because the Scripture tells us, that the hearts of all are fashioned alike, yet it is with generations as with Men, some incline to some Crimes more than other, and that is the reason that the title Treason, sometimes is set forth in Folio, sometimes in a lesser Volume. It's evident in Story, that the violent times of *Richard* the Second, had raised the value of that, amongst other offences, above measure; not long before his time, his Father had reduced that wild Notion of Treason to a certain rule, that formerly wandred in a Wilderness of opinions. But *Henry* the Fourth, either to save his own Stake, or to take the people, or both, reduced it again to the Statute rule of *Edward* the Third, and made void that Statute of his Predecessors, which had made a former Act of Parliament, (and all the service thereby done) Treason. The dimensions of Treason thus clearly limned and declared, taught ill disposed minds to keep out of the Letter, and yet to be bold with the sense; counterfeit Money they durst not, yet to diminish the same they thought came not within the Circle, and so it became a common grievance, till a Law was made, that

1 *H.* 4. *c.* 10.

3 *H.* 5. *c.* 7

that all purposed impairing of Money shall be Treason. And so the Parliament held forth to all Men that they had a power to declare Treason, without the bounds of the Statute of *Edward* the Third. The like power it held forth in the time of *Henry* the Sixth, for Men knew that Burglary and Robbery were mortal crimes, they would no more of that, now they devise a way to spoil, and prey, for themselves, and yet neither to rob, nor break House. To this end they would scatter little Scrolls in writing, requiring the party that they intended to prey upon, to leave so much Money upon such a day, at
8 *H.6. c.1.* such a place, and this was *Sub-pœna*, of burning the parties House, and goods: which many times did ensue upon default made, this practice was at once made Treason, to prevent the growth of such an evil. And the like was done with Robbe-
14 *H.6 c.8* ries and Man-slaughters, contrary to the King's Truce, and safe-conduct.

As many or more new Felonies were also now created.

One was the cutting out of Mens Tongues, and plucking
5 *H 4. c.4.* out of eyes, a strange cruelty: and that shewed the extreme savageness of those times, so much the more intolerable, by how much the poor tortured creature could hardly be either eye or ear witness, of the truth of his own wrong.

A second Felony was, the Customary carrying of Wool,
28 *H. 6 c.15.* or Wool-fells out of the Realm, to other places: except *Callis*.

Another Felony, concerneth Soldiers, which I refer over to the next Chapter.

The last was, Servants plundering their Masters Goods, and
33 *H. 6. c.1.* absenting themselves, if upon proclamation made, they appear not, this was also made Felony.

In the next place, as touching Forcible Entries, and Riots, the remedies so often inculcated, and new dressed, shew plainly the nature of the times: These kind of crimes commonly are as the light skirmishes in the beginning of a War, and follow in the conclusion also, as the faintings of a battel fought till both sides be weary.

I

I shall not enter into each particular Statute, divers of them being little other than as asseverations annexed to a sentence, to add credit, and stir up minding in men, that otherwise would soon forget what is said or done: The remedies formerly propounded are now refined and made more effectual.

First, In regard of speed, which is as necessary in these forces, as the stopping of the breaches of Waters in the first Act, and therefore one Justice of the Peace may proceed upon a holder by force, or breaker of the Peace, with a *Continuando*, but Riots are looked upon as more dangerous, and the first opposition had need be more stiff, least being uneffectual, aggravates the violence, and therefore it's required that two Justices, and the Sheriff should joyn in the work, to carry on the work with more Authority and Power. And what they cannot do in the punitive part, they must certifie to the King and his Council, or to the King's Bench if Traverse be made: So as though the power of the County be annexed to the Sheriff, *Jure ordinario*, to maintain the Peace, yet the Parliament did delegate the same upon Justices, as it thought most expedient. 8 H. 6. c. 9. 31 H. 6. c. 2. 2 H. 5. c. 9.

To maintain and recover the Peace when it's broken, shews more power, but to prevent the breach, shews more Wisdom, and therefore to all the rest, the Wisdom of these times provided carefully.

First, For Guards and Watches, according to the Statute at *Wint.* and committed the care thereof to the Justices of the Peace. 5 H. 4. c. 7.

And Secondly, Against the gendring of parties, for it's commonly seen, that such as are admired for excellencies of person, are so far idolized of some, as that their gestures, actions, and opinions are observed; tokens of favour (though never so small) are desired from such, and the Idol likes it well, gives Points, Ribbons, it may be Hats, and with these Men are soon gained to be Servants in the fashion, and not long after to be Servants in Action, be it War, or Treason, or any other way.

This

This manner of cheat the former times had been too well acquainted with; Knights and Esquires are not to be feared in times where the word Lord carries the wonderment away, their offences against the Statutes of Liveries are all great, though in themselves never so small; and therefore are sure
1 *H.* 4. *c* 7. of Fine, and Ransome, and it's well if they escape a years im-
8 *H.* 6. *c.* 4. prisonment, without Bail or Mainprize. Lords may wear the King's Livery, but may give none; Knights and Esquires may wear the King's Livery in their attendance upon his person, but not in the Country: The King and Prince may give Live-
2 *H.* 4. *c.* 21. ries to Lords and menial Servants. The sum is, that Liveries may be given by the more publick persons for State, not to make parties; and Men may wear Liveries in token of Service in Peace, and not in Arms.

One thing must be added to all, which may concern Trial in
20 *H.* 6. *Stat.* all, *Viz. A Law was now made, that noble Ladies shall be tryed*
2. *cap.* 6. *by their Peers*; A Law now of the first stamp, and strange it is that it never came before now into the breast of the Law, but that it came now, it is not strange; no meaner person than the Dutchess of *Glocester* is first charged with Treason; when that could not appear, then for Necromancy, very fitly, that she might be tryed by the Ecclesiastical way of witnesses; She is found guilty, and a sentence of penance, and imprisonment or banishment passed thereupon, after such a wild way, as both Nobles, and Commons passed this Law for the Vindication of that noble Sex from such hudling Trials for the future.

CHAP.

CHAP. XXII.

Of the Militia, during these times.

THe Title of *Henry* the Fourth to the Crown, was maintained principally by his Tenures, which the Courtiers call Knight-service, but the common people, force of Arms; and that which destroyed many a Man was the principal means of his subsistence. Otherwise it's clear, that his Title was stark naught; nor could he outface *Mortimar*'s Title without a naked Sword, which he used warily; for he had Enemies enough to keep his Sword in hand, and Friends enough to keep it from striking at random: for coming in by the peoples favour, he was obliged to be rather remiss, than rigorous, yet his manner of coming was by the Sword, and that occasioneth Men much to debate about his absolute power in the Militia, as supposing that what power he had, other Kings may, *De jure*, challenge the same: and let that be taken for granted, though it will not necessarily follow in true reasoning: And let it also be taken for good, that *Henry* the Fourth entred the Throne by his Sword, yet is there not any Monument in Story or Antiquity that favoureth any absolute right in him over the Militia, but the current is, I think, somewhat clear against it.

First, Because *Henry* the Fourth, *De Jure*, could not compel Men to serve beyond the Seas, but raised them by contract, and therefore by Act of Parliament, he did confirm the Statute, 1 *Ed.* 3. *Stat.* 2. *cap.* 5. which Statute was purposely made to that end: And the same also is countenanced by another Statute made in these times whereof we now Treat; by the words whereof appeareth, that the Soldiers for the Foraign Service were levyed by Contract, between them and the Captain, who undertook to Levy them by wage; so as none were then compelled to enter into Service by impress, or absolute command; nor is there any Authority

4 *H.* 4. *c.* 13.

8 *H.* 6. *c.* 19.

Authority amongst all those cited in *Calvin*'s Case, that doth mention any such thing; but contrarily, that Opinion of *Thirning* is express, That the King cannot send Men beyond Seas to Wars, without wages; and therefore no man is bound to any such service, by any absolute Legiance, as the Reporter would understand the point; but if he receiveth wages thereto, he by that Contract binds himself.

7 H. 4. *Fitzherb. Prer. St.* 100.

Secondly, It seemeth also to be granted, that such as went voluntarily in the King's service, ever had the King's pay, after they were out of their Counties, if the King ruled by his Laws, for by the Statute formerly mentioned, the King did likewise confirm the Statute of 18 *Ed.*3. *Stat.*2. *cap.*7. which is express in that point, and the matter in Fact also is evident upon the Records.

Thirdly, Touching the Arming of those that were thus Levyed, as there was a certain Law, by which all Men were Assessed to certain Arms, either by the Service and Tenure of their Lands, or by Parliament; for such as were not bound to find sufficient Arms by their Tenure, according as is contained in the Statute, 25 *Ed* 3. *Stat.*5. *cap.*8. So did *Henry* the Fourth, by the Statute formerly mentioned to be made in his time, confirm that Law of *Edward* the Third. In the Argument of *Calvin*'s Case, it is much insisted upon, to prove the Legiance of an English-man to the King to be absolute, because he hath power to send Men to War at his pleasure, and he hath only power to make War; and if so, then hath he absolute power in the Militia: As touching the power of sending Men to War, hath been already spoken; but as touching the power to make War, there is no doubt, but where a King hath made a League with another King, he only can break that League, and so make War; and that Opinion of *Brian* must be agreed for good in that sense. But if a League be made by Act of Parliament, or if the King will have War, and the Parliament will make a League without him; no Authority doth in such case avouch, that it is the right of the King, or that he hath a Legal power to break that League as he pleaseth: Neither in the

4 H. 4.

19 E. 4. f. 6.

the next place, hath the King any right or Legal power to make War with his own Subjects as he pleaſeth, but is bound to maintain the Peace, not only by his Oath at his Coronation, but alſo by the Laws whereto he is bound, if he will reign in right of an Engliſh King: For every Man knoweth, that the grounds of the Statutes of wearing of Liveries, was for the maintaining of the Publick Peace. And *Henry* the Fourth, amongſt other proviſions made againſt that trick, hath this; *That the King ſhall give only his Honourable Livery to his Lords Temporal whom ſhall pleaſe him, and to his Knights and Eſquires menial, and to his Knights and Eſquires which be of his retinue, and take of him their yearly Fee for Term of Life, and that no Yeoman ſhall take or wear any Livery of the King, nor of none other Lord.* And another Law was made within one year enſuing, confirming the former, and providing, the Prince may give Liveries to ſuch Lords as he pleaſes, and to his menial Gentlemen, and that they may wear the ſame as in the King's Caſe. By both which, the King and Prince are both in one Caſe, as touching the power of giving Liveries, if the one hath abſolute power, then hath the other the like; If one be under the Directory of Law in that point, then is alſo the other: For it is clear, that the King is intended by the Statute to be bound from giving Liveries, and the people from wearing them, otherwiſe than in eſpecial Caſes; and then the Concluſion will be, that if the King may not give Liveries to prejudice of the peace, then may he much leſs break the peace at his pleaſure; or levy Men, Arms, and War when he ſhall think moſt meet. Take then away from the King abſolute power to compel Men to take up Arms, otherwiſe than in caſe of Foraign Invaſion; power to compel Men to go out of their Counties to War; power to charge Men for maintenance of the Wars; power to make them find Arms at his pleaſure; and laſtly, power to break the peace, or do ought that may tend thereto: Certainly the power of the Militia that remaineth, though never ſo ſurely ſettled in the King's hand, can never bite this Nation.

1 *H.* 4. *c.* 7.

2 *H.* 4. *c.* 21.

Nor can the noise of the Commission of Array, entitle the King unto any such vast power, as is pretended: For though it be granted, that the Commission of Array was amended by the Parliament in these times; and Secondly, that being so amended, it was to serve for a Precedent or Rule for the future; yet will it not follow, that *Henry* the Fourth had, or any Successour of his, hath any power of Array originally from themselves, absolutely in themselves, or determinatively to such ends as he, or they, shall think meet.

First, As touching the amendment of the Commission, it was done upon complaint made by the Commons as a grievance, that such Commissions had issued forth, as had been grievous, hurtful, and dangerous: And the King agrees to the amendments, upon advice had with the Lords, and Judges: and if it be true that the amendments were in the material clauses (as it is granted) then it seemeth that formerly a greater power was exercised than by Law ought to have been; and then hath not the King an absolute power of Array, for the just power of a King can be no grievance to the Subject.

Exact. Collec. p. 406.

Secondly, If the Commission of Array thus mended, was to serve as a rule of Array for the future, then there is a rule, beyond which, *Henry* the Fourth, and his Successors may not go; and then it will also follow, that the power of Array, is not Originally, nor absolutely, in the King; but from, and under the Rule and Law of the Parliament: which rule was not made by the Kings own directions, but (as we are told) beyond expectation, alterations were made in material parts of the Commission, and the powers in execution there, whereof no complaint of grievance had been made. The issue then is, if the King had an Universal power in the Array, the Parliament likewise had a general Liberty without any restriction to correct that power.

P. 407.

Ibid. fol. 406.

Lastly, Suppose that this power of the Parliament is executed, and concluded, by the Commission thus amended, and that thereby the King's Power is established, yet can it not be con-

concluded, that this power is Originally or absolutely in the King: It's not absolutely in him, because it is limited in these particulars.

First, It's not continual, because it's only in case of eminent danger.

Secondly, It's not general upon all occasions, but only in case of a Foraign and sudden invasion and attempts.

Thirdly, the powers are not undefined, but circumscribed. 1. To Array such as are Armed, so as they cannot assess Arms upon such. 2. To compel those of able Bodies and Estates to be Armed, and those of able Estates, and not able Bodies, to Arm such as are of able Bodies, and not Estates: but this must be *Juxta facultates*, and *salvo Statu*. 3. Whereas they strain themselves to make the Statute of *Henry* the Fourth, and the Commission of Array, to consist with the Statutes of 13 E. 1. 1 E. 3. and 25 E. 3. thereby they affirm so many more restrictions unto this power of Array, as those Statutes are remedial in particular cases; yet do I not agree to their Glosses, but leave them to the debate already published concerning the same. *Collect.* 4. 24.

Secondly, As this power was not absolutely in the King, so was it not originally from themselves, because they had not the Legislative power concerning the same; but the same was ever, and yet is, in the Parliament; hereof I shall note only three particular instances.

First, the Militia is a posture, that extendeth as well to Sea, as Land: That which concerneth the Sea, is the Law of *Marque*, and Repriſal, granted to such of the people of this Nation, as are pillaged by Sea, by such as have the King's Conduct, or publick Truce. And by this Law, the party pillaged, had power to recompence himself upon that Man that had pillaged him, or upon any other Subject of that Nation, in case upon request made of the Magistrate in that Nation, satisfaction be not given him for his wrong; it was a Law made by the Parliament, whereby the Chancellour had power to grant such Letters or Commission, upon complaint to him made. 4 *H.* 5. *c.* 7.

Mag. Charta. cap. 32. This was grounded upon the Statute of *Magna Charta*, concerning Free Trade, which had been prejudiced by the rigour of the Conservators of the Truce, against the King's Subjects, although what was by them done was done in their own defence: And by which means the Foraigners were become bold to transgress, and the English fearful in their own Charge, and many laid aside their Trade by Sea, and thereby the strength of the Kingdom was much impaired: Nor is the equity of this Law to be questioned, for if the Magistrate upon complaint made, grants not relief, the offence becomes publick, and the Nation chargeable, in nature of an Accessory after the Fact, and so the next Man liable to give satisfaction, and to seek for relief at home.

The King then hath a power to grant Letters of *Marque* by Sea or Land, and this power is granted by Parliament, and this power is a limited power, only in particular cases, in regard that many times these prove in nature of the first light skirmishes of a general War.

Two other instances yet remain concerning the Order and Government of the Soldiers in the Army; the one concerning the Soldiers pay, *Viz. That Captains shall not abate the Soldiers* 18 *H. 6. c. 18* *Wages, but for their Cloathing, under peril of Fine to the King.* The other concerning the Soldiers service, *That they shall not depart from their Colours without leave, before the time of their* *cap. 19.* *Service be expired, unless in case of sickness, or other good cause, testified and allowed by the Captain; and such as shall do otherwise, shall suffer as Felons.* Which Laws could not have holden in force, had they not been made by Parliament, in respect that the penalties concern the Estates and Lives of Men, which are not to be invaded but by the Law of the Land: so as both Captains and Soldiers, as touching the Legislative power, are not under the King in his personal Capacity, but under the Law of the Parliament.

Lastly, As the rule of War was under the Legislative power of the Parliament, so was the rule of Peace; for whilst *Henry* the Sixth was in *France*, which was in his tenth year, from St. *George*'s day, till *February* following: The Scots propound terms

terms of Peace to the Duke of *Gloceſter*, he being then *Cuſtos Regni*, which he referred to the Order of the Parliament, by whom it was determined, and the Peace concluded in the abſence of the King, and was holden as good and effectual by both Kingdoms, as if the King had been perſonally preſent in his full capacity. *Cuſtos Hen.* 10 *H.* 6.

CHAP. XXIII.

A Survey of the Reigns of Edward *the Fourth*, Edward *the Fifth, and* Richard *the Third.*

THE Reign of *Henry* the Sixth, was for the moſt part, in the former parts of it, like fire buried up in the Aſhes; and in the latter parts breaking out into a Flame: In the heat whereof, the Duke of *York*, after Fealty given by him to *Henry* the Sixth, and diſpenſation gotten from the Pope, to break his Faith, loſt his life; and left his Son the *Markgrave*, to purſue his Title to the Crown, which he claimed by Inheritance, but more eſpecially by Act of Parliament made upon the agreement between *Henry* the Sixth, and his Father. This was *Edward* the Fourth, who nevertheleſs reſerved himſelf to the Election of the Lords, and was by them received, and commended to the Commons in the Field, by which means he gaining the poſſeſſion, had alſo encouragement to maintain the ſame, yet never held himſelf a King of full Age, ſo long as *Henry* the Sixth lived, which was the one half of his Reign: Nor did he; though he held many Parliaments, ſcarce reach higher than at reforming of Trade, which was a Theam well pleaſing to the people, next unto their Peace, which alſo the King carefully regarded. For although he had been a Soldier of good experience

perience, and therewith ſucceſsful, yet as one loath to truſt too far, either the conſtancy of the people of his own opinion, or the fortune of War with his neighbouring Princes, he did much by brave countenance and diſcourſe: and yet gain'd repute to the Engliſh for valour, after the diſhonourable times of *Henry* the Sixth. He had much to do with a wiſe King of *France*, that knew how to lay out three or four calm words at any time to ſave the adventure of his peoples blood, and make a ſhew of Money to purchaſe the peaceable holding of that which was his, only by force, until the wind proved more fair to bring all that continent under one head.

In his Government at home he met with many croſs gales, occaſioned principally by his own raſhneſs, and neglect of the Earl of *Warwicks* approved friendſhip, which he had turned into profeſſed enmity: And ſo weakned his own cauſe thereby, that he was once under Water, his Kingdom diſpoſed of by new intail upon the Heirs of Duke *Clarence*, and ſo the Earl of *Warwick* remained conſtant to the Houſe of *York*, though this particular King was ſet aſide. Nor did he in all this, gain any thing but a Wife, who though his Subject, and none of the greateſt Family, neither brought any intereſt unto her Lord and Husband amongſt Foraign Princes, brought nevertheleſs a Pearl, which was beyond all; which was the purchaſe of the Union between the two Houſes of *York* and *Lancaſter*, and a peaceable ſucceſſion in the Throne for a long while to come. It muſt be granted, that there fell therewith an unhappy inconvenience in the raiſing of a new Nobility of the Queens kindred, of whom the ancient ſtock of Nobility thought ſcorn, and yet they were ſo conſiderable as to be envyed. A wound hard to be cured, and yet eaſily avoided, by ſuch as know how to deny themſelves. And therefore can be no prejudice unto that concluſion: That for an Engliſh King to marry his own Subject, is more ſafe for the King, and beneficial for the Kingdom, than to marry a Stranger.

Com. lib. 3. c. 4. & 5. & 6.

But *Edward* the Fourth did not long lie underneath; upon the next fair Gale he comes from beyond the Sea, and (like his

his first Predecessor of the House of *Lancaster*) claims only his Dutchy, which no Man could in reason deny to be his right, and therefore were the sooner engaged with him in that account. This was an Act that in the first undertaking seemed modest, but when it was done, appeared too bold to adventure it upon the Censure of *Henry* the Sixth; and therefore they were not more ready to engage, than slack to dis-engage, till they were secure in the King's Interest, which not long after ensued, by the death of *Henry* the Sixth. Thus *Edward* the Fourth recovered the Crown to save his Dutchy. His Government was not suitable; for he came in by the people, but endeavoured to uphold himself by Foraign dependencies; as if he desired to spread his Roots, rather wide than deep, how ill this choice was, the event shewed; for plants that Root wide may be strong enough against an outward storm, but they soon grow old, barren, and rot irrecoverably from beneath: Such was the end of this Man's Government, himself lived and died a King, and left issue, both Male and Female, the one tasted the Government, the other kissed it, but neither of them ever enjoyed further than a bare Title. Nor was the Government of *Edward* the Fourth so secured by these engagements of Foraigners, for as he sought to delude so he was deluded, both by *Burgundy* and *Scotland*, to the prejudice of all three. Towards his own people, his carriage was not so much by Law as by Leave; for he could fetch a course out of the old way of rule, satisfie himself, dissatisfie others, and yet never was called to account: What was done by entreaty no Man could blame, and where entreaties are countenanced by Power, no Man durst contradict. Thanks to his Fate that had brought him upon a people tyred by Wars, scared by his success, and loth to adventure much for the House of *Lancaster*, in which no courage was left to adventure for it self. The greatest errour of his way was in the matter of Revenue; the former times had been unhappy in respect of good Husbandry; and *Edward* the Fourth was no Man to gather heaps: His occasions conduced rather to diffuse, and his mind generally led the way thereto, so as it's the less wonder.

Comin. lib. 3. c. 4.

Comin. lib. 3. c. 5.

wonder if he called more for accommodations than the Ordinary Treasury of the Crown could supply: Hereto therefore he used expedients, which in his former times, were more moderate; for whilst *Henry* the Sixth lived, he did but borrow, by Privy Seal, and take Tunnage and Poundage by way of hire: Afterwards when no Star appeared (but what was enlightned from his own Sun) he was more plain, and tryed a new trick, called *Benevolence*: unwelcome it was, not only in regard of it's own nature, but much more in the end, for it was to serve the Duke of *Burgundy* in raising a War against *France* in the first view, but in the conclusion to serve his own purse, both from Friends and Foes: And yet this also passed without much control, for when displeasure was like to ensue, he could speak fair, and feast, and if need was, kiss away all discontent. Towards his end, as stale drink, he grew sowr: For as in the first part of his Reign he had been supplyed by good will against Law; so in his latter times, he had gotten a trick of supply by Law against good will: This was by penal Laws, which are a remedy if they be used, *Ad terrorem*, but if strained beyond that, the remedy proveth worse than the disease; in their first institution they are forms of courtesie from the people to the King, but in the rigorous execution of them, are trials of mastery of the King over the people, and are usually laid up against days of reckoning between the Prince and them.

1. *E.* 4. *c.* 2.

Comin. lib. 4. *cap.* 1.

Those penal Laws are best contrived, that with the greatest terrour to the Delinquent bring the least profit to the King's Coffers. Once for all, this King's Acts were many, his enterprizes more, but seldom attaining that end which they faced. He was a Man of War, and did more by his Fame than his Sword, was no sooner resolved in good earnest but he died, left a Kingdom unassured, his Children young, and many Friends in shew, but in truth very few.

Edw. 5. } *Rich.* 3. } Now if ever, was the Kingdom in a trance, *Edward* the Fourth left a Son, the *Prima materia*, of a King, and who lived long enough to be enrolled amongst English Kings, yet served

ſerved the place no further, than to be an occaſion to fill up the meaſure of the wickedneſs of the Duke of *Gloceſter*, and a monument of God's diſpleaſure againſt the Houſe of *Edward* the Fourth; whether for that breach of oath, or treachery againſt *Henry* the Sixth, or for what other cauſe, I cannot tell. But at the beſt this Prince was, in relation to his Unkle the Duke of *Gloceſter*, little other than as an Overſeer to an Executor, that might ſee and complain but cannot amend: For the Duke ruled, over-ruled, and miſ-ruled all under the name of *Edw.* the Fifth, and left no monument of good Government upon Record, till he changed both the Name and Perſon of *Edward* the Fifth to *Richard* the Third; his Fame had lifted him up, and might have ſupported him had he regarded it. But as no Man had more honour before he aſcended the Throne, ſo no Man ever entred and ſate thereon with leſs; his proceedings were from a Protector to an Uſurper, and thence to a Tyrant, a ſcourge to the whole Nation, eſpecially the Nobility; and laſtly, an inſtrument of God's Revenge upon himſelf, a Man made up of Clay and Blood, living not loved, and dying unlamented. The manner of his Government was ſtrained, having once won the ſaddle, he is loth to be caſt; knowing himſelf guilty all over, and that nothing could abſolve his Fame but a Parliament, he calls it, Courts it, and where his Wit could not reach to Apologize, he makes whole by recompence, takes away benevolences; he is ready to let them have their preſent deſires, what can they have more: He promiſeth good behaviour for the future, which he might the better do, becauſe he had already attained his ends: Thus in one Parliament (for he could hold no more) he gave ſuch content, as even to wonderment, he could as ſoon find an Army in the Field to fight for him, as the moſt meritorious of his Predeceſſors. His ill Title made him very jealous, and thereby taught his beſt Friends, to keep at a diſtance, after which time few eſcaped that came within his reach, and ſo he ſerved God's Judgement againſt his adjutants, though he underſtood it not. Amongſt the reſt, the Duke of *Buckingham* (his great Aſſociate, both in the Butchery of the two young Princes, and uſurpation of

Fercat de Gal. lar. Imper. lib. 3.

1 *Rich. 3. c. 2.*

the Royal Scepter;) he lived till he had laid the Foundation of better times in the person of *Henry* the Seventh, and then received his reward: But an ill Conscience must be continually fed, or it will eat up its own womb.

The King's mind being delivered from fear of the Sons of *Edward* the Fourth, now dead, torments himself with thoughts of his Daughter alive; ashamed he is of Butchery of a Girl, he chooseth a conceit of Bastardizing the Children of *Elizabeth Gray*, that calleth her self Queen of *England*; but this proved too hard to concoct; soon after that, he goes a contrary way: The Lady *Elizabeth Gray* is now undoubted Wife of *Edward* the Fourth, and her eldest Daughter, as undoubted Heir to the Crown. And so the King will now be contented to adventure himself into an incestuous Marriage with her, if his own Queen were not in the way, only to secure the Peace of the Kingdom; which, he good King, was bound in Conscience to maintain, though with the peril of his own Soul; and in this zeal of his Conscience, his Queen soon went out of the way, and so Love is made to the young Lady. But *Henry* Earl of *Richmond* was there before, and the Lady warily declined the choice, till the golden Apple was won, which was not long after accomplished; the King losing both the Lady, his Crown, and own life together, put an end to much wickedness, and had the end thereof in *Bosworth-Field*.

1 *Rich.* 3. *c.* 15.

CHAP.

CHAP. XXIV.

Of the Government in Relation to the Parliament.

THe ſeaſons now in Tract were of ſhort continuance, lives paſſed away more ſpeedily than years; and it may ſeem uſeleſs to enquire what is the nature of the Government in ſuch a time, when as the greateſt work was to maintain life and ſoul together; and when all is done, little elſe is done. For though the Title of the Houſe of *York* was never ſo clear againſt that of *Lancaſter*; yet it had been ſo long darkned with a continual Succeſſion of Kings of the Red Roſe, that either by their merit had gained a Throne in the peoples hearts, or by their Facility had yielded their Throne up to the peoples will; as it proved not eaſie to Convince them that liked well their preſent Lot, and were doubtful of change, or to make them tender of the right of *Edward* the Fourth above their own quiet. Above threeſcore years now had *England* made Trial of the Government of the *Lancaſtrian* Princes, and thereof about thirty years experience had they of *Henry* the Sixth; they ſaw he was a gentle Prince. On the other ſide, *Edward* the Fourth, newly ſprung up out of a Root, watered with blood; himſelf alſo a Man for the Field.

This might well put the minds of the people to a ſtand, what to think of this Man, whoſe Nature and ends are ſo doubtful, and brought nothing to commend him to the good wills of the people, but his bare Title; which the common ſort uſually judge of, according as they ſee it proſper more or leſs. Add hereunto that Divine Providence did not ſo clearly, nor ſuddenly, determine his ſecret purpoſe concerning this change, by any conſtant ſucceſs to either part, by means whereof the one half of *Edward* the Fourth's Reign was ſpent, while as yet *Henry* the Sixth was in view, and the

minds of Men left unassured, neither trusting much to *Edward* the Fourth, nor he to them: and after that *Henry* the Sixth was gone out of the way, *Edward* the Fourth, could not readily change his posture, used Arguments of force and power, and for the most part, looked like a Man in Arms, with his hand on his sword, ready to draw upon the next Man that stands in his way.

1 *E.* 4. *n.* 30. Thus are the people partly driven, and partly drawn, into an Oath of Allegiance unto *Edward* the Fourth, under peril of Attainder; and the Parliament assured unto him once more: For immediately upon the departure of *Edward* the Fourth beyond Sea, after ten years of his Reign, the Parliament (never staying for the issue of Providence) declared the Throne void of *Edward* the Fourth, and *Henry* the Sixth King. The Judges likewise of the Courts of *Westminster* determined the same thing, as may appear by the Law Reports of those times in Print: wherein Re-attachments were often granted by them upon discontinuance of process by this Demise of *Edward* the Fourth. And thus *Henry* the Sixth is once more King for six months, *Viz.* from *October* to *April*, at which time the ballance turns, *Edward* the Fourth returns, gets into the Throne; *Henry* the Sixth is again Dethroned, all things are as they were, and all confirmed by Act of Parliament. For that Body is ever wise enough to side with power, rather than to spend much time upon fruitless Orders and Votes, that will pierce no Armour; and therefore like the times, must needs be subject to fits of distemper at the coming in of every Tide, and did build, and pull down, Enact, and disenact, turn and return, the English Crown, from *York* to *Lancaster*, and back again, and in conclusion, for some time did do little but undo. Nor can they be justly censured herein; for Councils of Men are not ordained to hinder Divine Providence, or over-rule Fate, but to fore-see, and close with occasions, in the most advantageous way for the publick good, and when both Winds and Currents are uncertain, to ride at flote, till they can discern the most commodious Haven to Winter in. To impute there-

therefore fault unto the Parliament in such Cases for want of Uniformity, and Immutability of Councils, is somewhat like the Notion that Batchellors conceit of Wives, they would have, but they do not know what other, than *an Idea of their own Fancy.*

Now if it be enquired which course prevailed, in order either to the King's Royalty, or the peoples Liberty, I shall answer neither of these; but the House of *York* prevailed to hold the Crown, and might have advanced the Authority thereof, had they not fall'n out amongst themselves for the spoil; and *Edward* the Fourth was not altogether disposed thereto: The success that he had in the Field, and his Soldiery, made him look big like a King of the greater size; but Kings sleep not securely upon such pillows; when the Militia is on Horse-back, it is as ready to be a Guard upon the King, as for him, and when it is most sober, not so easily governed as a Common-Wealth. And therefore *Edward* the Fourth, now in Arms, though he found it a hard Notion to maintain the peoples Liberty, where no Man is free from the Soldier, yet he enclined thereto: we read of a multitude of taxations of all sorts, and of benevolences, the worst of all those sorts: for Soldiers must have money, or if not, they will have it, but the King would not force things so far as his power could reach, he will have money, but it shall be by Order of the Parliament. He might have pretended much upon the Commission of Array, yet did it not, but chose rather to be Lord of the Seas: and because it was too great a Farm for his private purse, he prays aid of the Parliament by the way of Tunnage and Poundage, which was in demand nine years, before the Parliament granted it; and when it was granted, it was with such restrictions, that it is evident the King preferred the right of the Parliament therein, above his private Honour. 12 *E.* 4. *n.* 3. 12 *E.* 4. *c.* 3.

Secondly, Titles of Honour are but windy Notions, and every one knows what claim is made by Kings, to have the sole interest in conferring the same; this *Edward* the Fourth neglected so far, as he interested the Parliament, both 17 *E.* 4. *n.* 10, 16.

in

in the conferring of them, and resuming the same.

Thirdly, The course of Trade was now more especially looked to, not by the King and Privy Council, but by the Parliament; and because it was much decayed, partly by reason of the ill Government thereof, and partly by the excessive lavishness of these times, many Laws are made for remedy of both. And first, the Staple was settled sometimes at *Callis* alone, sometimes at it, and *Middleborough*, and by this means *England* gained Trade from both Nations; but the principal thanks is to be given to the interest between the King and the House of *Burgundy*. Then course is taken for the bringing of the Staple Commodities only to those places, and the return to be made in Money, and not commodity by exchange. Then for the well making of Staple Manufactures, and restraining Importation of Foraign Manufactures of such kinds. Then against transporting of English Coyn, and Importing of Foraign Coyn, other than Bullion.

3 *E.* 4. *cap.* 1.
4 *E.* 4. *c.* 2.
14 *E.* 4. *c.* 3, 5.
3 *E.* 4. *c.* 1.
1 *R.* 3. *c.* 12.
4 *E.* 4. *c.* 1, 2, 3.
17 *E.* 4. *c.* 1.

And as touching the second grievance, it seems, gallantry or vanity of Apparel, was a sore disease of these times, which were become times of Fashions, and wherein the King led the way by his own example; for he desired to be brave, and that he might be more brave, he passed Laws that the people should be less brave, assessing a sort of Apparel for every degree, and therein stooped so low, as to define the fashions of their very shoes.

3 *E.* 4. *c.* 5.
22 *E.* 4. *c.* 1.
17 *E.* 4. *c.* 1.

Fourthly, the Parliament retained their ancient right of reducing the course of Judicature; for whereas Sheriffs had hitherto holden their course of Trial of the meaner sort of Felonies, and Trespasses, and Offences, determinable only by Imprisonment, or Fines and Amerciaments; whereby Mens Estates did lie under the continual pillage of these covetous and extorting Officers: It was established by the Parliament, that these Men should have for the future, only power of enquiry, and to certifie at the next Sessions, and there the Trial to be, and Fines and Amerciaments to be set, Taxed, and Estreated, unto the Exchequer, and from thence to be levied, and thereof the Sheriff to give account; this was a great security to the peoples

1 *E.* 4. *c.* 2.

peoples eſtates, but gave them not a full remedy: for though the Trial was now more fair, yet theſe Officers were Judges of ſuſpicion, and had ſtill power upon ſuſpicion to impriſon their perſons, and ſeize their Eſtates, under colour to ſave them for the King, in caſe Conviction followed.

For remedy hereof, the Juſtices of the Peace have now power given them to Bail, in Caſes of light ſuſpicion, and it is further declared, that no Man's Eſtate ſhall be firſt ſeized, till Conviction and Attainder firſt be had. And becauſe Eſcheators grew no leſs burthenſome in their way; it was therefore Ordered, that no Man ſhall be allowed in ſuch Office, unleſs he hath Lands to the value of twenty pounds *per annum*, and that he ſhall be reſponſable for ſuch wrong done by himſelf, or by his Deputy and Farmer. 1 *R.* 3. *c.* 3. 12 *E.* 4. *c.* 9.

Thus *Edward* the Fourth quitted himſelf like a King in many regards, but ſoon ran himſelf out of breath, gave his Lamp to his *Son*, that was too weak to hold it; a Third ſnatches it away, and for two years carrying it exceeding well, yielded up all encroached Royalty to the people, and his Crown and Life to his Succeſſor. 1 *R.* 3. *c.* 2.

CHAP. XXV.

The Condition of the Clergy.

IF any gains were had in theſe uncertain times, the Churchmen might ſeem to have them, having now this advantage, that the Commonalty was diſtracted with uncertain Intereſts of the Succeſſion of the Crown: And themſelves only united under the Popedom, now freed from all Schiſm: and the Popedom managed by *Sixtus* the Fourth, who had the hap to be accounted more virtuous than any of his Predeceſſors had been, and to have all the Chriſtian Princes wholly at his Devotion. *Naucler.*

And

And lastly, Both the Clergy, and the Kings were now jointly engaged against the rising power of Religion, then called Heresie, in order whereunto, the Clergy leading the way, had the applause of them that followed upon an implicite Faith, that whatsoever was done, was exceeding well done.

Nor was it wisdom for Kings that sate loose in their Thrones to stumble the good Opinions of so considerable a party towards them. And therefore *Edward* the Fourth, in his first entrance, granted to the Clergy, that which could never be by them obtained from any of the foregoing Kings, *Viz. Free liberty of Process in all Cases Ecclesiastical, and in Tythes of Wood above twenty years growth; and in Case they were troubled upon the Statutes of Provisors, they should have their remedy in the Chancery, against those Judges, and their proceedings in such Cases there to be Cancelled.* This was done by Charter, and was sufficient to shew what the desire of the Clergy, and the intention of the King was, *Viz. At once to favour the Church, and under colour of favour done to the Clergy, to cancel both Common and Statute-Laws of the Kingdom, by the power of the Chancellor's Decree; nevertheless, all this was but the King's breath, the policy changed never a whit the more.* For the common Law held on its course, not only in Cases depending before the Holy Chair, but also even before the Bishop of the Diocess at home; so as neither the King was concluded from his Suit, nor the party endamaged from his Action by any such Charter. And so far was the Judges of the Common Law from being bound by the Chancery in such Cases, that they professed they would not delay to grant the *Habeas Corpus*, to deliver any Prisoner by Decree of the Chancellour, in any Case Triable at the Common Law: Much less did the Parliament favour these Men so far, as to give them any countenance in any way of gain upon themselves, but rather made bold with what the Church-men in former times challenged as their own; and upon this Account, whereas formerly it had inhibited Fairs and Markets upon the Lord's Day; Now it inhibited the sale of Boots, Shooes, &c. upon that day, though done never so privately, which they did at the first, only within the City of *London*

Antiq. Brit. 294.

9 *H.6. fol.*56. *Per Paston.*

5 *E.* 4. *fol.* 6.
9 *E.* 4. *fol.* 3.
7 *E.* 4. *fol.* 2. *Per Littleton.*

22 *E.*4 *fol.*37

London, and three miles thereof. I suppose it was made only by way of Trial, it being dangerous in such times to give a stop to all *England* at once, otherwise it might be wondred, why God's Honour should be better regarded in *London*, than all the Realm besides: Of this encroachment we find no complaint made by the Church-men; another touched them to the quick, although it befel only the Arch-Bishoprick of *York*. Hitherto that ~~he~~ held ordinary Jurisdiction over all the Bishops of *Scotland*, as being their Provincial. Now it is disclaimed by them all, and they are backed therein by their King, under pretence of great inconvenience to his Bishops in their so far travels; but in truth, not unlike to *Jeroboam*, though he pretended it was too much for them, yet he thought it unsafe for himself, that his Bishops should owe Canonical obedience to the Subject of another Prince, and upon this ground prevailed with Pope *Sixtus* the Fourth, to make the Divorce, and left it to future Ages, to try the validity thereof, if they would.

This is all that I shall observe of the Government of these three Kings, whose Reigns in the whole, exceeded not twenty six years, and their compleat power therein, not much above half so many.

CHAP. XXVI.

A ſhort ſum of the Reigns of Henry *the Seventh, and* Henry *the Eighth.*

THe courſe of Engliſh policy hitherto wandring in the different Currents, ſpringing from the double head of Monarchy, and Democracy, and in them likewiſe often toſſed up and down, partly by the blaſts of windy Titles and Pretenſions, and partly by the raging Tides from the Roman Sea, now begin to come to Anchor within view of Shore. Happy *England*, if the ſame prove good Harbourage for a fainting Nation. Two Kings now undertake the Steerage; the work of the firſt was to ſtill the Winds, the other the Seas, and ſo to bring the Adventure ſafe home. *Henry* the Seventh, hapned upon a good preparative for this work, in that he delivered the Kingdom from a Tyrant, whoſe irregular and bloody way was ſo odious to the people, that it ſet a foil upon his Succeſſor's Government, and made his Wiſdom, Valour, and Juſtice appear greater than poſſibly it was. His Valour made way for the other two, he had enough thereof to ſerve a wiſe Man in caſe of extremity; at other times he made more uſe of his Majeſty than Manhood; being confident that the people knew not where to mend themſelves, but would be at his Devotion, ſo long as he was better than his Predeceſſor, though he cared not how little. His Wiſdom was his greateſt part, of which, upon all occaſions he made the greateſt improvement he could, without reflecting upon Conſcience, or Religion, whereof he had taſted no more than would render him a civil Man, whereunto his Education did lead the way: thus, though his Valour brought him to the Crown, yet it was his Wiſdom that

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ſettled him in the Throne. For though he loved himſelf ſo well, that he was loth to pretend allowance of any acceſs of Foraign help to his own atchievement in his Title, or that he was guilty in the leaſt manner in his Entry upon the Throne; yet to keep danger far off, he provided one guard for his perſon, and many for his Title.

That of his Perſon he only pretended as a ceremony of State brought from the French Court, and yet it's ſtrange that it went ſo well down with a Free people: For that Prince that will keep guards about his perſon in the midſt of his own people, may as well double them into the pitch of an Army whenſoever he pleaſes to be fearful; and ſo turn the Royal power of Law into force of Arms: but it was the French Faſhion, and the King's good hope to have all taken in the beſt ſenſe.

His Title (ſetting aſide the ſaying of *Philip* the Hardy, That Kingdoms only belong to them that can get them) would hardly endure the touch, till Pope *Innocent* by his Bull, confirmed the Crown to him to hold by a ſix-fold right, *Viz. Of Inheritance, of War, of Eſpouſals, of Election, of gift by Parliament*, and laſtly, *of Pontifical Benediction*; which the King liked marvellous well, and the rather becauſe his Title by Marriage was buried up in the middle, and ſo made the leſs noiſe. For though it was his beſt guard, yet he liked not that it ſhould be ſo reputed, leſt his Title ſhould ſeem rather conferred upon him, than gained by him, and ſo ſhould hold by a Woman, or at the beſt by the courteſie of *England*, if the peoples favour ſhould ſo far extend the Law in that point, by both which he holds the honour *of a complete King diminiſhed:* His Title by Inheritance is much diſputable, if the right Heirs of *John of Gaunt* be enquired after: and much more that of War, for although that brought the Poſſeſſion, yet no right or Title, but by wrong; which may indeed be plaiſtred over by Election, or Act of Parliament, but then he muſt be Tenant to the people. As touching the Pontifical Benediction, himſelf took that but as a redundancy, that might ſway with the Clergy, and do his Title no hurt. Nevertheleſs, what ſe-

Hevet. lib. 4. cap. 32.

verally they cannot do, by joynt concurrence he accounts ſo fully done as if he were a King againſt all the World, and more, yet is he not ſure enough, but as one jealous is more tender, ſo is his eye ever upon his Title; there is his guard, and regard, as if it were the outworks of his Crown, which once loſt, the Crown cannot hold out long. In this work he minded ſo much his greatneſs, that he loſt the repute of his goodneſs, then caſting his eye upon the Government and finding it of a mixt temper, wherein if Royalty prevails not, popularity will; like a good Soldier whilſt his ſtrength is full, he ſallies upon the peoples liberties, in regard of their perſons with ſuch cunning conveyance, as he taught the people to dance more often and better to the tune of Prerogative and Allegiance, than all his Predeceſſors had done; nor did the people perceive it till they were over their ſhooes, and then they clearly ſaw their condition, and that it was in vain for them to wrangle with their own acts, of which more particularly in the next Chapter. The Legiance of perſons of the people once gained, their Eſtates more eaſily follow, and therefore though in the former he wrought by *Ambuſcado*, in this he may be more brave, and charge them in the Van; yet this he did alſo by degrees, firſt by light Skirmiſhes of borrowing ſmaller ſums of Money (poſſibly when he had no need) and paying them again, thereby to gain credit for greater ſums, of which he intended not ſo ſudden return. Then he charges them home with *Benevolences* (a trick gained in right of his Wife from her Father) for he hoped that the perſon of *Richard* the Third was now become ſo abominable as his Laws would be the leſs regarded. But in this courſe he gained nothing but Wind; then (as *Edward* the Fourth) he falls upon *Malevolences of penal Laws*; things made, *in terrorem*, to ſcare Men to obedience, rather than to compel them; but are now executed, *Ad angorem*, and the people find that he is but a word and a blow with them, and thus ſerving his Prerogative with power, and his purſe with his prerogative, he made all ſerve his own turn, *Humanitatem omnem vincente periculo.*

Jovius Brit.

Jovius Brit. fol. 9.

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In the Field he always put his Wisdom in the Van, for as he was parcimonious in expences of Money, so much rather of Blood, if he could prevail by Wit; Generally he was the first in Arms, to make Men believe he was more ready to fight than they: Thus he many times gained the advantage of his adversaries, and sometimes came off without blows. In the Battel he did put on courage as he did his Armour, and would dare to adventure just as far as a General should, as if he had ever regard of his Crown, rather than of the honour of a forward Soldier, which nevertheless was also so dear to him as he is seldom found in the Rere, although his judgement commanded in cheif rather than his courage. In the Throne he is much more wise, because he was willing it should be known. In doing Justice he is seldom suspected, unless where himself is party, and yet then he is also so shamefaced, as he would ever either stalk behind some Law that had a semblance to his ends, or when he meant to step out of the way, he would put his Ministers before; not so much that his fineness might be known, but his Royalty. For the Lyon hunts not its own prey, nor is it regal for a King to be seen in catching of Money, though he be understood; besides it was needless, he had Lords, Bishops, Judges, and other instruments of malevolent aspects, as so many furies, outwardly resembling Men for the Common-Wealth, but working for the common mischief; like some pictures one way looking right, and another looking wrong; and thus the King comes lawfully by what he catched, though his instruments did not, and must be still holden for a good King, though it be his hard hap to have ill servants. Take him now amongst the people he is alike to all, yea in some things that might seem to brush upon the King's own train; for he had some of his suit that were not altogether of his mind, and these he would spare to the course of Justice if need were; as it befel in the case of the Duke of *Suffolk*, whom he suffered to be tryed at the King's Bench bar, for a Murther done upon a mean person, and by such means obtained the repute of a Zealous Justiciar, as if Justice had been his principal vertue. All this suited well with his main end; for he that will milk his

his Cattel must feed them well; and it encourages Men to gather and lay up, when they have Law to hold by what they have.

His Religion, I touch upon in the last place, as most proper to his temper, for it was the last in his thought, though many times the first in the acting; but where it stood in his way he turned it behind him, he made Church-men his instruments, that the matter might better relish, for who will expect ought save well from Men of Religion, and then if the worst come, he was but misled by such, as in common reason ought to be trusted. And it is his unhappiness to meet with Clergy-men to serve a turn, and a Pope to give his Benediction to all. Nor was this *Gratis*, for there were as many mutual engagements between the Clergy and him, as any of his Predecessors of the House of *Lancaster* besides. Lastly, it may well be supposed how ever wise this King seemed to be, that many saw through him, which procured him a troublesome Reign; though many times occasioned by his own interposing in Foraign Interests, wherein he suffered more from others, than they from him. Amongst the rest the Dutchess of *Burgundy* (though a Woman she were) mated him with Phantomes and Apparitions of dead bodies of the House of *York*, the scare whereof put the King and all his people in allarm, and striking at idle shadows slew one another. All which, together with the appearances of Collections, Taxes, and other accoutrements, to furnish such employments, were enough to disturb that ease and rest, that the King aimed to enjoy, make him burthensome to his people, and both himself and them weary of each other; and so he went down to the grave with but a dry funeral, leaving no better testimony behind him, than that he was a cunning man rather than a wise English King: and though he died rich, yet is he since grown into debt to the Pen-men of his story, that by their own excellency have rendred him a better King than he was.

HEnry the Eight was a conception, in whom the two Bloods of *York* and *Lancaster* did meet, both of them unconquered, both of them predominant; and therefore no wonder if he was a Man beyond the Ordinary proportion of other Men in ſtature of body, and in qualities of mind not diſproportionable. It's regularly true, that great bodies move ſlowly, but it holds not where much ſpirit is, and it was the condition of this Prince to have a Spirit of the largeſt ſize that acted him into motion with no leſs ſpeed than mighty power. This himſelf underſtood right well, and therefore might be haughty upon a double Title both of purchaſe and Inheritance; nor did he fail of expectation herein, for he could not endure that Man that would own his right in competition with the King's aims, and therefore would have his Kingdom be like his doublet to keep him warm, and yet ſit looſe about him, that he might have elbow room; ſuitable hereunto were his undertakings, invited thereunto by the inordinate motions, or rather commotions of his neighbouring Princes; for it was now full Sea in all Countries; and though *England* was inferiour to ſome of them, yet the King held it diſhonourable for him not to adventure as far as the braveſt of them, and in the end outwent them all: What he wanted in number, he ſupplyed in courage; wherein he ſo exceeded, that he avoided dangers, rather out of judgement than fear. His thoughts, reſolutions, endeavours, and actions, were all the birth of occaſion, and of each other; as if he had obtained a general paſs from providence, with warranty againſt all Counter-guards whatſoever. *Henry* 8.

His Wiſdom ſerved him to eſpy preſent opportunities, rather than to foreſee them, and therefore was not ſo crafty as his Father in preventing occaſions, yet more dexterous in giving them the rout. For he could manage his hand and foot better than his Father, ſtrike down-right blows, and rather than he would fail of his ends would make one, as many times he did.

Another

Another advantage he had of his Father, for conſidering the times, he was a learned King, which made his Actions carry more Majeſty, and like a well feathered Arrow from a ſtrong hand, drive through the wind ſtedily to the mark, when as his Father like a weak Archer muſt raiſe his compaſs, and crave aid of the wind to help him to be right in the end.

It's affirmed by ſome, that *Henry* the Eight was courteous, and debonair, if ſo, he muſt thank his Education; but it may be rather ſuppoſed, that upon occaſion he uſed the Art of Inſinuation, which he might learn both from the Father-ſide, and Mother-ſide; but he neither practiſed it much, nor did he rely upon that skill, for his reſolution led him to cut the knot that he could not untie. His Learning led him moſt to Divinity, and therein ſhewed him light enough to ſee much into the Myſtery of iniquity, which he did explain to the World paſſing well; but as touching Devotion, he left that to the care of the Church-men.

He was very well accommodated with Money; Firſt, from the full Coffers left by his Father, much whereof he ſpent in paſtimes and gallantry, as he was Heir to *Edward* the Fourth; and much alſo in his Devotion to the Pope, as he was Heir to *Henry* the Seventh, in lieu of all which, he was rewarded with a Title, *Defender of the Faith*; and ſo much ill gotten, was much ill ſpent. But a better ſupply he had when *Rome* and he parted aſunder, and the Current of the Riches of the Clergy was ſtopped from running at waſte, and returned into the King's own Treaſury, and ſo might have died the richeſt Prince in the World, but that he wanted the main Clauſe in the Conveyance, To have and to hold. The Wiſdom of God ſo ordered it, for theſe felicities were too great and many for any moderate ſpirit to bear gently, much more for the King's Spirit, that was ever on the Pinacle, and grown to that height, that like an emboſſed Stag, none muſt cope with him, he muſt run and out-run all; none muſt croſs him under extream peril, no good is to be done but by following afar off; nor is it a full wonder if in this his heat, he knows neither faith-

faithful Servant, Counſellor, nor Wife, but ſtrikes at all that ſtands in his way. Nevertheleſs, in his cool temper, and when he was entangled with ſome perplexed occaſion, he could uſe the advantage of good Counſel, and the wits of others that were more crafty than himſelf, wherein it was his good hap to have ſome ever nigh him that were for his turn, and unto them committed much, that himſelf might be at eaſe to hear good news of ſucceſsful diſpatches.

In his youth he was ſerved by the wiſe Counſellors trained up by his Father, and he then willing enough for his pleaſure, was contented by their advice to ſerve his people for a time, that they might be his Servants for ever. The two great Conduit Pipes of this Treaſury, which he had from his Father, he cut off at his peoples requeſt, as if he loved his people above all his riches; and after that, he laid aſide his pleaſures, and youthful company to apply himſelf more cloſely to the affairs of his Kingdom, as if he loved that above all pleaſure: which nevertheleſs ſtuck to him ſo long as he lived, and ſwayed too much in the greateſt Affairs of his Government.

Thus the firſt heat of his courſe was run well; ſo long as the Privy Council continued moderately poiſed: But no ſooner began one of them to put up beyond his place, and to bid adieu to the advice of all the reſt; but he gets the uppermoſt ſeat in the King's Head, makes a foot-ſtool of the King's Heart, and then it's two to one that the people in ſuch caſes muſt bear the greater burthen; for who ever firſt ſaid it, he ſaid moſt true, *That Prerogative in the hand of a King, is a Scepter of Gold, but in the hand of a Subject, it is a rod of Iron.* The reign of this King *Henry* the Eighth, ſerves us with much experience of this kind, for if the conſideration of the Affairs of this Government ſhould be divided, the ſame would be double: the one under the Regiment of Cardinal *Woolſy*, the other of the King, by *Cromwell*, *Cranmer*, *Gardner*, and others interchangeably. I call that of *Woolſy* a Regiment, for he was in nature or condition of a *Pro-Rex*, during the King's Juvenility. This

Temporizer thus ſuper-induced upon a Cardinal raized from
Thuan lib. 1. mean Degree to be *Legate à Latere*, courted by Foraign Princes, flattered by the Emperour with Titles of Son and Couſin, made him lead a dance, that the King (however Active he was) is put to his Carere to hold him company; which the King perceiving, tripped up his heels, and left the Arch-Biſhop, the Chancellour, the Cardinal, the Legate, and many more with him, lying on the ground: *No Pride like to that of the Clergy, whoſe parts are more ſublime, and apprehenſions clear*: If God addeth not a ſuperiour work to rule over all, *A little Honour will blow up all with a powder.* The King having thus matched the Cardinal, forgot his former natural pace, and once in a heat, could cool no more, till Death cooled him. He knew by experience, that the Cardinal could over-awe the people, why ſhould not the King do as much, if the Lords ſtooped to the Cardinal, why not much rather to the King? The Cardinal pulled down, reared up, turned ſquare to round, why ſhould he be leſs than his Subjects? Such conceits as theſe ſoon wound up the King's mind to that height, that it's death to him to ſtoop one inch lower to more moderate advice, though he loved their perſons never ſo well; but all muſt be content with the weight of his Arm, though it were no ſmall one; and yet in point of Religion, Affairs tended to a kind of Reformation all this while.

CHAP. XXVII.

Of the State of the Crown.

THat the Crown of *England* now abounded more in Flowers than Croſſes, the Face of Story doth hold forth to ordinary Obſervation; and yet few are ſatisfied, either in the true nature of the particular advantages, or in

in the manner how they were obtained, or in the continuance. I must therefore make a little stop upon them, because in the true discerning of them the discovery of the nature of the Government in latter days doth much depend. Hitherto the Crown came short of absolute power over the people, upon two grounds in observation; one relating to the Clergy, the other to the Laity.

The Church-men were heretofore under a Foraign power, and a Foraign Law, against which, Kings durst not deeply engage: either not being assured of their own Title, or employed in pursuit of other game, or being of a weak Spirit, were scared with the Thunder-bolt of the Pope's Curse: But the Laity were under another Law, and such an one, as by clear and unquestionable Custom, had established bounds, between the way of Kings, and the rights of the people: Neither did Kings directly invade those Borders, either led thereto by a kind of Conscience in such of them as were Morally enclined, or in others by a kind of fear of raising up Earth-quakes from beneath, which commonly doth overthrow high Towers sooner than Winds from above. But now such interests are laid aside fast asleep, by two Kings: whereof one cared not much for fear, and neither of them for Conscience: For *Henry* the Seventh, having leisure to study the Nature, and contemplate the Fashion of the English Crown, dislikes the Model in some particulars: It was not rich enough, nor well poised to his mind, which ever was not to be poor, but towards his latter time to be exceeding rich; as supposing that to be the only way to be more desirable to Friends, formidable to Enemies, and absolute over his people. And this opinion of his missed in the main end, though it attained his immediate desire: for by mistaking the right way, it made a rich King, but not a rich Crown; he delighted more in the riches of his people, than in a rich people: and this bred no good blood, because the people thought that the Law was not on his side in that matter. They suffered him to visit their purses, but are loth it should prove Customary, lest they should lose their

common right, they therefore choſe rather to give him power by Act of Parliament, to revoke Letters Patents, and Grants, and make reſumptions of Offices, Fees, Annuities, and the like, that he might rather repoſſeſs his own, than poſſeſs theirs; many penal Laws likewiſe of a limited and Temporary regard are made; and as Cheeſe after a full dinner, they cloſe up all with Subſidies; For it was evident to all Men, that the Royal mind of the King ſerved no further than to take what was given; provided that the people would give what elſe would be taken. By this means *Henry* the Seventh left rich Coffers to deſcend to *Henry* the Eighth, but the Crown was ſtill the ſame in price.

In this Act of the Play, the people carry away the plaudite: The ſecond Act was the point of Allegiance, wherein both parts carry themſelves ſo cunningly, as it's hard to adjudge the Garland, yet it may be thought, the King obſerved it rather, becauſe he offered all the play, whilſt the people did only lie at their cloſe guard. The whole project conſiſted in this, to gain a more abſolute Allegiance from the Engliſh to their King: and becauſe this is exemplified partly in War, and partly in peace, that part which concerneth War, will more properly fall under the conſideration of the Militia: and therefore I ſhall refer the ſame to that head in the 32. Chapter enſuing, and will come to the ſecond conſideration of Allegiance, in relation to Peace, and therein touch upon the Kings power in making of Laws, and of Judicature according to thoſe Laws. As touching the making of Laws, the ingenuity of *Henry* the Seventh, could not ſuffer him to make any claim thereto in any poſitive way, yet his Actions declare that his heart was that way: For being beſet with troubles, he could often fancy dangers, and Arm himſelf; then call a Parliament, who were wiſe enough to grant as readily as he asked, rather than to be compelled thereto: ſo he had Laws made according to his own will, though he made them not.

The matter of Judicature comes next, and therein he made his

his Judges appear, and not himself, though they did not only represent his person, but his mind; so things were done according to his mind, though he did them not: And thus his Excellency seemed more eminent in finding and making instruments fitting to do his work, than in doing his own work. Nevertheless, all this was but from hand to mouth; no fundamental Law is altered all this while; if the Laws were made by Parliament, the King made them not: if the Judges turned the Law to the King's ear, the Law was still the Crown, though the King wore it. But *Henry* the Eighth was no such Man, he had not this skill of undermining, nor desired it; he was tender of the least diminution of his Honour, industrious in finding out the occasion, and a most resolved Man to remove it out of the way, though it reached as high as the Tripple Crown; a Man underneath many passions but above fear: What need he care for pretences, his Father loved Riches, he power, when he came to traverse his ground, he found quickly where the Church-men trespassed upon him, and began with them, resting upon the wisdom of his Father, and the Infallibility of the Pope. *Henry* the Eighth had taken to Wife *Katherine* his Brothers Dowager, and continued in that condition eighteen years without wrinkle of Fame, till the great success of *Charles* the Fifth, the Queens Brother, against the Pope and French, scared the King into a jealousie of his greatness, and the Emperour's failing in courtesie to Cardinal *Woolsy*, the King's Achates, stirred the Cardinals Spirit to revenge, for the loss of his hopes in the Popedom. For the Cardinal finding the King's mind to linger after another Bedfellow, by whom he might have a Son, he made the French Ambassadour his Instrument to mind the King of his unlawful marriage with the Queen, and to mention unto him *Margaret D' Allanson* a Princess of *France*, both in Blood and Beauty. *Thuan. lib.* 1. The King liked the Notion of Divorce, but disliked the motion concerning the French Lady, himself being prepossessed with a fair Object at Home, the Lady *Anne Bullen*, then attending upon the Queen; and thus being moved, entred into a scrutiny concerning the condition of his marriage, *Fox. hist. fol.* 31.

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wherein he had been formerly touched, both by the French and Spaniards themselves upon several motions made.

Fox. Sleyden. lib. 9. First, Between *Charles* the Fifth, and afterwards between the *Dauphine* and the Lady *Mary*, afterwards Queen; Hereat the Cardinal winked all the while, till the infallibility of the Chair of *Rome* came upon the Stage; then bestirring his wits he lodged the Case upon Appeal thither, as he hoped beyond all further Appeal, and so held the King there fast, till himself might accomplish his own ends. But the wheel once set a running would not stay; the King espyes the Cardinal in his way, and bears him down, then finding the fallacy of the infallible Chair, he hearkens after other Doctors, follows their light; and being loth to hear what he expected from *Rome*, he stopped the way to all Importation of such Merchandize, as might be any ways prejudicial to the Prerogative Royal, with the penalty of the loss of Land, or Liberty and Fine, the two latter being formerly warranted by Law: The first served as a scare, for (though it were but by Proclamation) Men might justly fear that he who was so stout against the Pope, would not stick to scourge his own Subjects out of his way in the time of his heat.

The King thus entred the Lists, both against Pope and Cardinal, now under *Præmuniri* (whereof he died) meets the English Clergy, (thus losing their Top-gallant) standing up in the Rere against him, and talking at large. Nevertheless, the King stops not his Carere, puts them to the rout for maintaining the power Legatine. They soon submit, crave pardon, give a sum of money, and perfume their sacrifice with that sweet Incense of *Supreme Head of the Church of England.* This was done, not by way of Donation, (for the Convocation had no such power) but by way of acknowledgement in flat opposition to the Jurisdiction of the Pope: It became the common subject of discourse amongst all sorts, but of wonderment to the Pope: Yet for fear of worse, he speaks fair, for he was not in a posture to contest, but all would do no good; the Queen had appealed to *Rome*, the Pope by *Woolsy*'s advice makes delays: The Parliament espying the advantage; at once

1531. An. Antiq. Brit.

Foxius Brit. fol. 20. Sleyden. lib. 9.

once took all Appeals to *Rome* away, and established all sentences made or to be made within this Land, notwithstanding any Act from *Rome*; and enjoyned the English Clergy to administer the several Acts of publick worship, notwithstanding any inhibition or excommunication from any Foraign pretended power: The grounds upon the preamble of the Law will appear to be two. 24 *H.* 8 *c.* 12.

First, That the King of *England* is Supreme Head in rendring Justice within the Nation in all causes therein arising which is more than the Recognisance of the Clergy two years before this Act did hold forth, yet this acknowledgement is not absolute, but in oppolition to Foraign pretensions.

Secondly, That the Clergy in *England* having power, may in matters Spiritual determine all doubts without Foraign help, and administer such duties as to their place do belong; not hereby determining that the Church-men ever had such power by Law, nor that they ought originally to have such power. They never had it, for no sooner were they dis-joyned from the Laity in these affairs, but immediately they were under the Pope, and received their power from him. And, *De jure*, they cannot challenge such power, but by a positive Law, such as this Law of *Henry* the Eighth, which also giveth but a restrictive and limited power, *Viz.* In matters Testamentary, of Divorce, Matrimony, Tythes, Oblations, and Obventions. So as if they will challenge such power, they must thank the Parliament for it, and use the same accordingly as persons deputed thereunto; and not in their own right, or right of their places. In all this the King's Supremacy is but obscurely asserted, and rather by implication, shewing what in reason may be holden, than by declaration of what was, making way thereby.

First, Into the opinions of Men before they were enjoyned to determine their Actions, but within two years ensuing or thereabout, the Law is made *positive*,

The King shall be taken and accepted the only Supreme Head on Earth 26 *H.* 8. *c.* 1.

Earth of the Church of England; *and have power to visit, correct, repress, redress, reform, restrain, order, and amend, all such errours, heresies, abuses, offences, contempts, and enormities, as by any manner of Spiritual Authority, or Jurisdiction, ought or may lawfully be reformed.*

Which in the preamble is said to be made to confirm what the Clergy in their Convocation formerly had recognized. The corps of his Act is to secure the King's Title, the King's power, and the King's profit. As touching the King's Title it is said, that in right it did formerly belong to him, which is to be granted by all so far as the power is rightly understood. But as touching the King's profit it cannot be said that the whole lump thereof did belong to the King, because much thereof was not so ancient, but, *De novo*, raised by the Pope's extortion; and therefore the true and real profits are by particular Acts of Parliaments ensuing in special words devolved upon him. The nature of this power is laid down in this Statute under a threefold expression.

First, It is a visitatory, or a reforming power which is executed by inquiry of offences against Laws established, and by executing such Laws.

Secondly, It is an ordinary Jurisdiction, for it is such as by any Spiritual Authority may be acted against irregularities; and thus the Title of Supreme Ordinary is confirmed.

Thirdly, It is such a power as must be regulated by Law, and in such manner as by any Spiritual Authority may lawfully be reformed. It is not therefore any absolute Arbitrary power; for that belongs only to the Supreme Head in Heaven. Nor is it any legislative power, for so the Law should be the birth of this power, and his power could not then be regulated by the Law: nor could every Ordinary execute such a power, nor did *Henry* the Eighth ever make claim to any such power, though he loved to be much trusted.

Lastly,

Laſtly, this Power was ſuch a Power as was gained formerly from the King by foraign Uſurpation, which muſt be intended, *De rebus licitis*, and once in poſſeſſion of the Crown, or in right thereto belonging, according to the Law; for the King hath no Power thereby to confer Church-livings by Proviſorſhip, or to carry the Keys, and turn the infallible Chair into an infallible Throne. In brief, this Power was ſuch as the King hath in the Common-wealth; neither legiſlative, nor abſolute in the executive, but in order to the Unity and Peace of the Kingdom. This was the right of the Crown which was ever claimed; but not enjoyed further than the Engliſh Scepter was able to match the Romiſh Keys: And now the ſame being reſtored by Act of Parliament, is alſo confirmed by an Oath 28 *H.* 8. *c.*10.
enjoyned to be taken by the People, binding them to acknow- 35 *H.* 8. *c.*1.
ledge the King under God ſupreme head on earth of the Church
of *England*, *Ireland*, and the King's Dominions, in oppoſition to 35 *H.* 8. *c* 3.
all Foraign juriſdiction.

And Laſtly, by a Law which bound all the People to maintain the King's Title of Defender of the Faith, and of the Church of *England* and *Ireland*, in earth the ſupreme head, under the peril of Treaſon, in every one that ſhall attempt to deprive the Crown of that Title.

We muſt deſcend to particulars; for by this it will appear that theſe general Laws concerning the King's refined Title, contained little more than matters of Notion, otherwiſe than a general barr to the Popes future intereſts: And therefore the Wiſdom of the State (as if nothing had been already done) did by degrees parcel out by ſeveral Acts of Parliament the particular intereſts of the Popes uſurped Authority in ſuch manner as to them ſeemed beſt.

And firſt, concerning the Legiſlative Power in Church-goverment; It cannot be denyed but the Pope, *De facto* had the Power of a negative vote in all Councils, and unto that had alſo a binding Power in making Laws, Decrees and Decretals out of his own breaſt; but this was gotten by plunder, he never had any right to headſhip of the Church, nor to any ſuch Power in right of ſuch preferment, nor was this given to the

King as head of the Church, but with such limitation and qualifications, that it's evident it never was in the Crown, or rightly belonging thereto.

First, nigh three years after this recognition by the Clergy in their Convocation, it is urged upon them, and they pass their promise, *In verbo sacerdotii.* 25 H.8.c.19.

And lastly, it is confirmed by Act of Parliament, that they shall never make, publish, or execute any new Canon, or constitution provincial, or other, unless the King's Assent and License be first had thereto; and the offences against this Law made punishable by fine and imprisonment: So as the Clergy are now holden under a double bond, one the honour of their Priesthood which binds their Wills and Consciences; the other the Act of Parliament which binds their Powers, so as they now neither will nor can start. Nevertheless, there is nothing in this Law, nor in the future practice of this King, that doth either give or assert any power to the King and Convocation to bind or conclude the Clergy or the People, without an Act of Parliament concurring, and inforcing the same: And yet what is already done, is more than any of the Kings Predecessors ever had in their possession.

A second Prerogative was a definitive power in point of doctrine and worship. For it is enacted, that all Determinations, Declarations, Decrees, Definitions, Resolutions and Ordinances according to God's word, and Christ's Gospel, by the King's advice and confirmation, by Letters-patent under the great Seal, at any time hereafter made, and published by the Arch Bishops, Bishops and Doctors, now appointed by the King, or the whole Clergy of England, *in matters of the Christian Faith, and lawful Rites and Ceremonies of the same, shall be by the People fully believed and obeyed under penalties therein comprised: Provided that nothing be done contrary to the Laws and Statutes of this Realm.* A Law of a new birth, and not an old Law newly revived, or restored. This the present occasion, and the natural constitution of the Law do fully manifest: The occasion was the present perplexity of the People, for instead of the Statute, *Ex officio*, which was now 32 H.8.c.26.

now taken away, the six Articles commonly called the six stringed whip, were gotten into power by a more legal and effectual Original. The Parliament had heard the cries of the People concerning this, and having two things to eye at once; one to provide for the Peoples liberty, and further security against foraign pretentions; the other (which was more difficult) for the liberties of the consciences of multitudes of men of several opinions (which could not agree in one judgement, and by discord might make way for the Romish party to recover its first ground) and finding it impossible for them to hunt both games at once, partly because themselves were divided in opinion, and the bone once cast amongst them might put their own co-existence to the question, and partly because the work would be long, require much debate, and retard all other affairs of the Common-wealth, which were now both many and weighty. In this troubled wave, they therefore wisely determine to hold on their course in that work, which was most properly theirs, and lay before them: And as touching this matter concerning Doctrine, they agreed in that wherein they could agree, *viz.* To refer the matter to the King and Persons of skill in that mystery of Religion, to settle the same for the present, till the Parliament had better leisure, the People more light, and the minds of the People more perswaded of the way. Thus the Estates and Consciences of the People for the present must endure, *In deposito* of the King and other Persons, that a kind of *Interim* might be composed, and the Church for the present might enjoy a kind of twilight, rather than lye under continual darkness, and by waiting for the Sun rising, be in a better preparation thereunto. For the words of the Statute are, That all must be done without any partial respect or affection to the Papistical sort, or any other Sect or Sects whatsoever. Unto this agreement both parties were inclined by divers regards. For the Romanists, though having the possession, yet being doubtful of their strength to hold the same, if it came to the push of the Pike, in regard that the House of Commons wanted Faith, as the Bishop of *Rochester* was pleased to say, in the House of Lords; and that liberty 25 *H.8. c.* 14. 31 *H.8. c.* 14.

of conſcience was then a pleaſing Theme, as well as liberty of Eſtates, to all the People. Theſe men might therefore truſt the King with their intereſts, having had long experience of his Principles: And therefore as ſupreme Head, they held him moſt meet to have the care of this matter, for ſtill this Title brings on the Van of all theſe Acts of Parliament. On the other ſide, that party that ſtood for Reformation, though they began to put up head, yet not aſſured of their own Power, and being ſo exceedingly oppreſſed with the ſix Articles, as they could not expect a worſe condition, but in probability might find a better; they therefore alſo caſt themſelves upon the King, who had already been baited by the German Princes and Divines, and the out-cries of his own People, and poſſibly might entertain ſome prejudice at length, at that manner of worſhip, that had its original from that Arch-enemy of his Head-ſhip of the Church of *England*. Nor did the the iſſue fall out altogether unſuitable to theſe expectations: For the King did ſomewhat to unſettle what was already done, and abated in ſome meaſure the flame and heat of the Statue, although nothing was eſtabliſhed in the oppoſite thereto, but the whole reſted much upon the diſpoſition of a King ſubject to change.

Sleyden, lib. 9. Anno 1535.

As touching the conſtitution of this Law; that alſo ſhews that this was not derived from the ancient Right of the Crown now reſtored, but by the poſitive conceſſion of the people in their repreſentative, in regard it is not abſolute, but qualified and limited diverſly.

Firſt, this power is given to this King, not to his Succeſſors, for they are left out of the Act, ſo as they truſted not the King; but *Henry* the Eighth, and what they did was for his own ſake.

Secondly, they truſted the King, but he muſt be adviſed by Council of men of skill.

Thirdly, they muſt not reſpect any Sect, or thoſe of the Papiſtical ſort.

Fourthly,

Fourthly, all must be according to God's Word, and Christ's Gospel.

And lastly, nothing must be done contrary to the Laws and Statutes of this Realm. And thus though they trusted much, yet not all, nor over long. For it was but a temporary Law, and during the present condition of affairs. Nor did the King or People rest upon this Law, for within three years following, another Law is made to confirm what was then already done by the King; and a larger power granted to the King, to change and alter, as to his Wisdom shall seem convenient. Thus the King's injunctions already set forth were established, all opposal to them inhibited, and the King hath a power of Lawing, and Unlawing in Christ's Kingdom, and to stab an Act of Parliament in matters of highest concernment: And the reason is, the King will have it so, and who dares gain-say it, as *Cranmer* said, the King loves his Queen well, but his own opinion better; for new things meeting with new love, if it be once interrupted in the first heat, turns into a displeasure as hot as the first love, nor had either party great cause to boast in their gainings; for none of them all had any security, but such as kept close to a good conscience. 34 & 35 H. 8. cap 1. *Antiq. Brit.*

All this, though much more than any of his Predecessors ever attained, was nevertheless not enough till his Title was as compleat. The Pope had fashioned him one now above twenty years old, for his service done against *Luther*, and others of that way, and sent it to him as a Trophee of the Victory; this was *Defender of the Faith*, which the King then took kindly, but laid it up till he thought he had deserved it better; and therefore now he presents it to the Parliament, who by a Statute annexed it to the Crown of *England*, for ever now made triple by the Royallizing of that of *Ireland* amongst the rest. 35 H. 8. c. 3.

A third Prerogative concerned the King's Power in temporal matters, and now must *England* look to it self, for never had English King the like advantage over his people as this man had. His Title out-faced all question; Left rich by his-

his Father, trained up in the higheſt way of Prerogative, abſolute Lord of the Engliſh Clergy, and of their Intereſt in the People, of a vaſt ſpirit, able to match both the Emperour and French abroad, and yet more buſie at home than all his Predeceſſors. A King that feared nothing but the falling of the Heavens; the People contrarily weary of Civil Wars enamored with the firſt taſtes of Peace and Pleaſures; whiles as yet it was but in the bluſhing child-hood, over-awed by a ſtrange Giant, a King with a Pope in his belly; having the Temporal Sword in his hand, the Spiritual Sword at his command. Of a mercileſs ſavage nature, but a word and a blow; without regard even of his boſome companions, what can then the naked relation of a Subject do with ſuch an one, if providence ſteps not in and ſtops not the Lions mouth, all will be ſoon ſwallowed up into the hungry maw of Prerogative. To ſet all on work comes *Steven Gardiner* from his Embaſſage to the Emperour, ſad apprehenſions are ſcattered, that the motions abroad are exceeding violent and ſudden, that the Emperour and French King are faſt in nothing, but in change according to occaſion, that like the Eagle they make many points before they ſtoop to the prey. That if the motions at home do wait upon debates of Parliament, things muſt needs come ſhort in execution, and the affairs of this Nation extremely ſuffer. A dangerous thing it is that the King ſhould be at diſadvantage, either with the Emperour or French King, for want of power in theſe caſes of ſudden exigences, and for ſome ſmall time, during the juncture of theſe important affairs, that ſeeing likewiſe at home the point concerning Religion is coming to the Teſt, the minds of men are at a gaze; their affections and paſſions are on their tiptoes. It's reaſon the King ſhould ſtear with a ſhorter Rudder, that this care might meet with every turn of providence, which otherwiſe might ſuddenly blow up the Peace, and good Government of this Nation. Theſe and the like repreſented a fair face to that which followed, and made way for the King without ſhame to ask what no King before him ſuffered ever to enter into conceit,

I mean a Legiſlative power to this effect, That Proclamations made by the greater part of the King for the time being and his Council, whoſe names hereafter follow, with ſuch penalties, as by them ſhall be thought meet, ſhall be of equal force ~~by~~ an Act of Parliament, provided it ſhall not extend to the forfeiture of Eſtates or Priviledges; nor to loſs of Life (but in caſes particularly mentioned in the Law) provided no Proclamation ſhall croſs any Statute, or lawful, or laudable Cuſtom of this Realm: All which at length comes to be demanded by a formal Bill, with as ill favoured a Preface, as the matter it ſelf, which was much worſe ere it was well liked in the Houſe of Commons, and when all was done, proved a Bare ſtill: Whatever it was, it paſſed in manner above ſaid, neither much to the deſire of the Commons, that ſo much was given; nor to the good liking of the King, that there was no more: For in ſtead of a Legiſlative power, which he graſped at for himſelf, he received it in common with his Council, and ſo becomes ingaged neither to alter nor deſtroy that Brother-hood, if he intended to reap any fruit of this Law, leaving the point in doubt whether his gain or loſs was the greater. For this Law, thus made for this King, theſe Counſellors, and theſe times and occaſions, can be no precedent to the future, unleſs to inform Kings that the Parliament hath a power to give more Authority and Prerogative to Kings, than they or the Crown have by common Right, and to give it with ſuch limitations, and qualifications, as ſeemeth good to them. 31 *H.*8. *c.*8. with or as

And ſecondly, that even *Henry* the Eighth acknowledged that the Legiſlative power was not in the Crown, nor was the Crown capable thereof, otherwiſe than it was conferred by the Parliament. Only *Steven Gardiner* might glory in this atchievement, having for the preſent obtained much of his ends by perſwading the King that Foraign Princes eſtranged from him, not ſo much for his departure from the Pope, as for ſome apprehenſions they had of his departure from that way of Religion and Worſhip, which they apprehend every Chriſtian ought to maintain. And therefore if he meaned

meaned to gain better correſpondency amongſt theſe Princes, he muſt engage more reſolvedly to the fundamentals of the Worſhip, though he ſhook off ſome ſleighter ceremonies with the Romiſh Supremacy; for he knew that they were willing enough with the later, though the other could not go down with them; thus did foraign correſpondency float above, when as the Church, as then it ſtood, was underneath, and gave the tincture to every wave. And it was holden more ſafe by the Romiſh party to truſt the King (thus attempered) with the legiſlative power in the Church matters, than the rough Parliament, whoſe courſe ſteered quite wide from the Roman ſhore, as if they never meant to look that way any more; though *Cranmer*, and the chief Officers of State, and of the Houſhold, were by the Law Judges of the matter in fact, as well as the King, yet in the concluſion the King only was of the *Quorum*; all this yet further appears in the penalty, for by a Proviſor it is moderated, as to all forfeitures of Life, Limb or Eſtate; and in the concluſion extended only to Fine and Impriſonment; unleſs in ſome caſes mentioned, and excepting offences againſt Proclamations made by the King or his Succeſſors, concerning Crimes of Hereſie. For it is the firſt clauſe of any poſitive Law that ever intimated any power in the King of ſuch cogniſance and puniſhment of Hereſie; too weak a principle it is to ſettle a Prerogative in the King, and his Succeſſors, as Supreme Head of the Church, thus by a ſide wind to carry the keys of Life and Death at their girdle, and yet a better ground cannot I find for the Martyrdom of divers brave Chriſtians in thoſe times, than this touch of a Law glancing by: All which paſſing, *Sub ſilentio*; and the Parliament taking no notice thereof, made way for the Statute, 38 *H.* 8. *c.* 26. Formerly mentioned to come more boldly upon the Stage.

This was one wound to the legiſlative power of the Parliament thus to divide the ſame: Another enſues that in its conſequences was no leſs fatal to that power which remained, and it was wrought by ſome Engine that well ſaw that

that the Diſeaſe, then ſo called, grew to be epidemical amongſt the more conſiderable party in the Kingdom; that the Lady *Jane Seymor* (now Queen) was no friend to the Romaniſts; that ſhe was now with child, which if a Son (as it proved to be) was like to be Succeſſor in the Throne, and be of his Mothers Religion, and ſo undo all, as in the iſſue all came ſo to paſs: To prevent this, nevertheleſs they fancy a new conceit, that Laws made by Engliſh Kings in their minority, are leſs conſiderately done, than being made in riper years. And ſo by that one opinion countenanced a worſe, which was, that the Legiſlative power depended more upon the judgement of the King, than the debates, and reſults of the Parliament; a notion that would down exceeding well with Kings, eſpecially with ſuch an all-ſufficient Prince as *Henry* the Eight conceived himſelf to be; upon this ground a Law is made to enable ſuch of the King's Succeſſors, by him appointed, as ſhall be under the age of twenty and four years, when Laws by him are made, to adnul the ſame by Letters-patents, after ſuch Prince ſhall attain the ſaid age of twenty four years. Thus the Arms of the Parliament are bound from ſettling any Reformation, let them intend it never ſo much; a Muſe is left open for the Romiſh Religion ſtill to get in, when the Seaſon proves more fair. The Parliament was now in its minority, and gives occaſion to the Reader to bewail the infirmities of the excellency of *England*. 28 *H.* 8. *c.* 17.

A fourth advance of Prerogative concerned the executive Power in Government of the Church. *This had formerly much reſted in the Prelacy, and that upon the chief* Prælatiſſimo *at* Rome; *now there is found in* England *a Prelater than he; the Pope was already beheaded, and his head ſet upon the King's ſhoulders: To him it is given to nominate all Biſhops, and Arch-Biſhops within his Dominions, by long deſire, and that the party once elected ſhall ſwear fealty, and then ſhall be conſecrated by Commiſſion, and inveſted; but if upon the long deſire, no Election be certified within twelve days, the King ſhall by Commiſſion cauſe his own Clerk to be Conſecrated and Inveſted.* 25 *H.* 8. *c.* 20.

ſted. The occaſion that firſt brought in this Preſident, was the acceſs of *Cranmer* to the See at *Canterbury*; for though the Head-ſhip had been already by the ſpace of two years tranſlated from *Rome* to *England*, and yet the courſe of Epiſcopizing continued the ſame, as formerly it had been. I mean as touching the point of Election: For though in their Original, Biſhops were meerly Donatives from the Crown, being inveſted by delivery of the Ring and Paſtoral Staff, and until King *John*'s time, the Canonical way of Election was diſallowed, yet King *John* by his Charter, *De communi conſenſu Baronum*, granted that they ſhould be eligible, which alſo was confirmed by divers publick Acts of Parliament in after times; and now by this Law laſt recited, and with this way the King was contented for the ſpace of ſix years, for the Reformation intended by the King, was not done at once, but by degrees; and therefore though this courſe of long deſire was brought into uſe, yet the Parliament being of ſix years continuance, a neceſſary thing in times of ſo great change of policy, began this courſe of Election, by giving the King power to nominate, and allowing of the Pope power to grant to ſuch his Bulls or Pall at his own will, otherwiſe they ſhould be conſecrated by Commiſſion without his conſent; and thus at the firſt, the Pope's concurrence was not excluded, though his Negative was. In this poſture of Affairs comes *Cranmer* to be conſecrated Arch-Biſhop: And being nominated thereunto by the King, the wily Pope knowing the King's aim, meaned not to withſtand, leſt he ſhould loſe all, but granted the Pall as readily as it was deſired; ſo as *Cranmer* is thus far Arch-Biſhop of *Canterbury*, without all exception; yet he muſt go one ſtep farther, and take the old Oath to the Pope, which the King allowed him to do, *Pro more*, and which he did, *Renitente conſcientia*, ſay ſome, and with a *Salvo*, ſay others, and all affirm it was done, *Perfunctorie*, like ſome worn Ceremony, or civil Complement. Nevertheleſs it was not ſo ſoon turned over, the Arch-Biſhop loved not the Office, the King loved not Partnerſhip in this matter; and it was evident to all that no man could ſerve theſe two Maſters any longer, an agreement is ſoon concluded

Rot. Pat. 17 Joh. 35 E. 1. St. Carl. 25 E. 3. De provis. 13 R. 2. c. 2.

Antiq. Brit. vit. Cranmer.

cluded in Parliament to exclude the Pope's Power quite out of this game, *and all is left to be done by the King and his Commissioners, by the Law formerly propounded. In all this the Pope is loser, the English Clergy ~~the~~ savers, for the Pall cost* 20
Cranmer *nine hundred marks.* And the Crown is the great gainer; for hereby the King got the men sure to him, not only by their own acknowledgement and submission, but also by a Statute Law.

And lastly by Oath, which to make sure was treble twined, once upon their first submission in the King's twenty second year, when they had been under *Premuniri.*

Secondly, soon after the decease of Queen *Katherine Dowager*, in the twenty sixth year, which Oath was more compleat than the former; containing,

First, a Renunciation of all Fealty to the Pope, or any Foraign Power.

Secondly, an obligation to adhere to the cause of the King and his Successors.

Thirdly, a disavowing of the Pope, otherwise than as another Bishop or fellow Brother.

Fourthly, an engagement to observe all Laws already established against the Pope's power.

Fifthly, a disavowing of all appeals to *Rome.*

Sixthly, an engagement to inform the King of all Messages or Bulls, sent from *Rome* into *England.*

Seventhly, an engagement not to send, or be privy to the sending of any Message to *Rome* for any such purpose.

The third Oath was that of Fealty, which anciently was due to Kings, and now revived to be taken by all Bishops upon their admission. And thus the English Prelacy, having been sworn slaves to the Papacy ever since *Becket*'s time, are now preferred to a more Royal Service, and the pursuit by Kings after their right, being laid aside by the space of 300 years, is now renewed, and the prey seised upon by the Lyon, who found it upon a better title, and in better condition

by much, than when at the first it was lost, for it was upon some semblance of Reason that the Arch-Bishop and Clergy gained it; but being afterwards dispossessed thereof by the Pope, and yet without any other shadow of Title, but the Power of his own gripe, for the present he is the occupant, and becomes Proprietor by prescription: Till now the felon apprehended, the stolen goods are the Kings in Right, and by Remitter, whereunto the Parliament were by the Statute adding their conveyance, establishes the same by an unquestionable Title; nevertheless their service is no less servile to this Crown, than it had been to the Romish Miter; formerly they asserted the Pope's Infallibility, now the King's Supremacy. They are now called by the King, made by the King, sent by the King, maintained by the King, whatsoever they are, whatsoever they have, all is the Kings: He makes Bishops, he makes new Bishopricks; and divides or compounds the old as he pleaseth, by a power given to *Henry* the Eighth by Parliament, which ~~oath~~ *Power* was never in any Prince before or after him, that I can find; so as the Crown had it not, but the man, and it died with him.

31 *H.* 8. *c* 9.

The King thus loaden with Power and Honour, above all his Predecessors (if without proportionable maintenance to support the one, and act the other) must needs consume himself (as ~~en~~ in a Tympany) by growing great: For though he was left rich by his Father's Treasure, yet his Zeal to *Rome* in its now poor captived condition under the Imperial power, stirring up in him great undertakings abroad (besides his own pleasures and gallantry at home) exhausted that, and doubtless had starved these his grand designs, had he not found the hidden Treasures of the Cells and Monasteries; the sight whereof so roused up his Spirits, that he adventured upon the purchase, though he knew difficulties enough to have stopped his undertakings, if he had not resolved, both against fear and flattery. It was not done without deliberation; for the thing was felt as a grievance before the *Norman* times, and complained of in Parliament above a hundred and forty years ago, and divers times since, but

one

but Kings either underſtood not, or believed not, or durſt not give remedy, or had much elſe to do. But now the King is beyond all his Predeceſſors, he knows much, dares do more, and is at leiſure, he will go as far as Emperour or French King, and beyond them alſo, but would not try maſteries with either, for they were all Cocks of the game.

The firſt occaſion that diſcovered the work feaſible, was a precedent made by Cardinal *Woolſy*, whoſe power was enough to diſſolve ſome petty Cells, and no oppoſition made. The King might well expect the work would be as lawful for him, and not much more difficult, or if any ſtorms enſued, the people that had ſo long complained, and felt the burthen of theſe excreſcences of the Clergy, would ſoon find out a way to calm them, the King need do no more than ſpeak, and the people will do. This opened the door, but that which brought the King in, was the hold the Pope had in this Kingdom by theſe cloyſtered people, who were perſons dead in Law, and dead to all Law but the Canon; and upon this account the King's Anceſtors had poſſeſſed themſelves of the Cells, in the hands of Foraigners, in times of War, and now a deadly feud is ſtirred between *Henry* the Eighth and the Pope their holy Father; the Children cannot expect to thrive, when as their Father is caſt out of doors; and ſo all muſt out together: yet the manner is obſervable, they muſt not be caſt out, but muſt go out; the inferiour and greater part are dead perſons, have learnt obedience, they can neither bark nor bite, and therefore they may ſleep, and what is done, muſt be done with ſuch of them as are alive. Upon a Viſitation, theſe are brought under the Teſt, and found in ſuch a condition, that they had better give way, and voluntarily ſurrender, than abide the trial: Once more the ſmalleſt are picked out whiles the greater ſtand by and wonder, but either do not foreſee, or (in deſpair of altering the King's reſolution) do nothing but expect the ſad hour, which within four years comes upon them all, every one of them chuſing rather to ſurrender, and expect the King's mercy for maintenance during life, than adventure againſt the dint of

27 *H.*8 *c.*27.

31 *H.*8. *c.*13.

of his Juſtice and Power, and ſo loſe all; for they were ill befriended amongſt all ſorts of the people. Thus came the perſonal Eſtate and Stock of theſe Houſes to the Kings immediate Treaſury, and their yearly maintenanee to the diſpoſing of the Crown, which might have advanced the ſame, well nigh to the value of two hundred thouſand pounds yearly, but that the King intended to let the people enjoy the fat as well as he, that they might be mutually engaged to maintain hold of the prey that they had joyntly gotten. Out of all which nevertheleſs the Crown had a ſmall rent, or ſervice annual, for the acknowledgement of their tenure, beſides the firſt fruits of Spiritual Dignities, and the Tenths, both which he formerly had already obtained.

26 H. 8. c. 23.

The firſt whereof was but caſual, and occaſional in the payment, ariſing only at the entrance of the party into his promotion; and which was gained by the Pope from *Edward* the Firſt, although at his Parliament at *Carleile*, in his thirty fourth year he withſtood the ſame: This was above three hundred and twenty thouſand pounds in the whole ſumm. The later was annual, and amounted to above thirty thouſand pounds: And thus the Pope's Uſurpations are turned into duties to the Crown, but were much leſſened, in regard that theſe Cells and Monaſteries were accounted amongſt theſe Eccleſiaſtical promotions, which by their diſſolution fell off in that account. Nevertheleſs, the advancement that might by a parcimonious King have been made of the fall of this Cedar, was ſuch, that the Crown might have been rendred of it ſelf abſolute and all-ſufficient. But *Henry* the Eighth was not thus minded, the Affairs of *Europe* were gotten into a high pitch; Princes generally over active; *Henry* the Eight inferiour to none of them; what comes in goes out, and he is a rare exemple of that divine Proverb; *As Riches increaſe, ſo do the Mouths of them that eat*; he ſtill ſtands in need of his peoples love, purſes and power; ſo Divine *providence orders the matter*, that Kings can never attain further end of their undertakings without the aid of the

Fox. Mart. fol. 322.

the people, than their labour, leſt they ſhonld be too big to be Chriſtians, and the people too mean.

CHAP. XXVIII.

Of the Condition of the Parliament in theſe Times.

THey are no good Expoſitors that conſider their Text by piece-meal only, nor they good Hiſtorians, that will tell you the bare journal of Action, without the *Series* of occaſion: ſuch as theſe will ſpeak much of the Actions of *Henry* the Eighth, what advancement he brought to the Crown, and make a compleat Monarchy, wherein the King may Act what he reſolveth; reſolve what he pleaſeth; and pleaſe what he luſteth; when as in truth, the thing is nothing ſo: for though many of his Actions, in relation to particular perſons, cannot be juſtified by any Law; ſo in truth, did they never proceed from any Law, but meerly from the paſſion or will of the man, and connivance of the people, who could bear that from this King, that their Anceſtors would never endure under any other. And yet in all the Grand concernments of the Nation, the Law kept ſtill upon the top, nor did the King enter into any Competition therewith, or lead the way thereunto, other than by eſpecial allowance of the Parliament.

For firſt, it's evident, though the King was Supreme Head of the Church; yet this was not like the head of a mad man, led by phancy, without the Law of Reaſon, or Reaſon of Law; But it was defined, circumſcribed, and formed thereby, with Qualifications and Limitations, as hath been already expreſſed in the former Chapter.

Secondly, it is no leſs clear that the Legiſlative Power reſted in the Parliament, and not in the King, when he was in his greateſt height; for as Head of the Church, he had no ſuch

such power in Church-matters; or if he had such a right, it was taken away by the Acts of Parliament; nay, when the Pope was yet possessed of this Head-ship, the Parliament did determine the manner of the Worship of God, in some particular cases, as in the keeping of the Lord's Day, the Statute of *Edward* the Fourth, to the Honour of God did provide for the observing thereof; and to the Honour of God, it was taken away by a Statute in the time of *Henry* the Eighth, if the words of either Statute may be believed. But more especially, after that this Head-ship was translated to the King, the Parliament provided, that the Canons should be examined and allowed by the King, and thirty two persons, one part of the Clergy, the other of the Temporalty, chosen by the King. And those that shall be assented unto, and confirmed by the King, and the thirty two persons, or the major part of them shall be obeyed, and put in execution, the residue shall be void: *Provided nothing shall be done against the King's Prerogative, or the Laws and Customs of this Realm*: So as the King had much, but he had not all; and what he had, the Parliament gave him by a Law, that was Executory all the days of *Henry* Eighth, by divers continuances, and was not any power devolved to the Crown, under the Title of Supremacy, nor by Vertue of the Act of Parliament concerning it, but by the continual influence from the Parliament upon the Crown, as well before that Act as after, derived upon it. The King hath then this right of Law-making, but it is with the thirty two he hath it, but not his Successors.

1 Edw. 4.
15 H. 8 c. 9.
25 H. 8 c. 19.
27 H. 8. c. 15.
35 H. 8 c. 16.

And lastly, he hath it but by a derivative power from the Parliament, and a Committee for that service: and in a word, he hath the Power, but the Parliament hath still the Law of that Power.

The second Priviledge of the Parliament hitherto, concerneth only Laws concerning Church-Government. In the next place cometh to be considered the Legislative Power in point of Doctrine, which doubtless issueth from the same principle of Power with the former. For if the Church which

(which as a pillar and ground holdeth ~~for~~ thē Truth) be the company of profeſſing Believers; then ought it not to ſeem ſtrange, if theſe in their repreſentative do intermeddle with this Power, or rather duty; and for the matter in fact, neither did the King challenge this Power, nor did the Parliament make any difficulty of Conſcience in executing the ſame, and yet there were many Learned and Conſciencious men of that number. forth

They therefore, as touching the Doctrine, proceed in the ſame way, with that formerly mentioned concerning the Diſcipline: And a Committee alſo is by them made of the King and Learned men, to ſet down rules for Faith and Obedience, and for the order of the publick Worſhip of God, according to the Word of God; and theſe Rules are confirmed by a Statute, ſo as the King hath a power in the point of Doctrine, but it is a derivative power, it is a limited power to himſelf, and not to his Succeſſors, and to himſelf and others joyned with him. 32 *H.*8. *c.* 26.

And laſtly, nothing muſt be done contrary to the Laws of the Kingdom.

Secondly, the Parliament hath not only a right to grant and limit this power unto others, but alſo to execute the ſame immediately by its ſelf; and therefore before they granted this power to this Committee, whereas formerly the Pope uſurped the power to be the *Omega* to the reſolves of all Councils, the Parliament intercepted that to their own juriſdiction, in flat oppoſition to the Infallibility of the Roman Chair, ſo far as to Diſherize ſome Opinions, which by the ſentence of that infallible mouth, had been marked with that black brand of Hereſie. And what they did before this Act of Delegation to the King, and other Committees for this work, they did afterwards, as not concluding their own power by any thing, that they had ſo done, as may appear by their Cenſure of the tranſlation of the Bible, made by *Tindall*: By their eſtabliſhing another tranſlation: By their ordering and appointing what perſons might read the ſame: By their qualifying the ſix Articles, and the like. The Parliament then hath a power which they may grant, and yet grant nothing away; they may 5 *H.*8. *c.*14. 34 *H.*8. *c.*1. 35 *H.*8. *c* 5.

limit this power in others as they will, and yet not conclude themſelves. And the King by accepting this limited power, muſt diſclaim both the Original and abſolute Right, and cannot claim the ſame by right of Head-ſhip or Supremacy. This was one great windfal which the Parliament had from the ruines of *Rome*, not by way of uſurpation, but re-ſeiſure, for their poſſeſſion was ancient, and though they had been diſpoſſeſt, yet that poſſeſſion was ever under a continual claim, and ſo the right was ſaved.

A ſecond that was no leſs fatal unto that See; was the loſs of all power over Eccleſiaſtical perſons in this Kingdom: For whereas the Popedom had doubly rooted it ſelf in this Nation, one way by the *Regulars*, the other by the *Seculars*; the Parliament by the diſſolutions of Monaſteries, *&c.* conſumed one to aſhes, and by breaking the fealty between the other and the Pope, parted the other root and the ſtock aſunder, and thence enſued the down-fall of this tall Cedar in this Nation; and Prelacy now left alone muſt fawn elſewhere, or lye along, a poſture wherein that rank of men can never thrive: Up again they peep, and eſpying a King that loved to towre aloft, they ſuddenly catch hold, promiſing their help to maintain his flight, and ſo are carried up, and like a Cloud born between Heaven and Earth, making the Commons beholding to them for the King's Sunſhine, and the King for their intereſts in the people, and for his ſuperlative advancement above them all. Now though the Engliſh Prelates may think their Orb above the winds, yet were they herein deceived. The Parliament had power in their Election, before the Pope uſurped that to himſelf; now that they are diſcharged, Kings are poſſeſſed of them by long deſire, but it is not by way of reſtitution, for Kings were never abſolutely poſſeſſed of any ſuch power, but as Committees of Parliament, and by delegation and conceſſion from them, and therefore muſt render an account to them, and abide their judgement when they are thereto called.

Thirdly, the Parliament had the diſpoſing and ordering of all the Church Revenues, as the Laws concerning Monaſteries, Sanctuaries,

Sanctuaries, Mortuaries, First-Fruits, Tenths, Annates, and such like, sufficiently manifesteth.

Fourthly, the Parliament had the power of granting Licenses, Dispensations and Faculties, setting a rule thereunto, as in case of Non-residency, and delegating the power to Committees, whereof see more in the Chapter following concerning ordinary jurisdiction. 21 *H.8. c.* 13. 25 *H.8. c.*16. 28 *H.8. c.*13.

Fifthly, the Parliament reserved the Cognisance of all appeals for final sentence unto themselves, and disposed of all the steps thereunto, as unto them seemed most convenient: For though it be true in some cases the Arch-Bishop of *Canterbury* had the definitive sentence, and in other Cases the Convocation, yet was this but by a temporary Law, and this also granted to them by the Parliament, which took it away from the Pope, and never interested the Crown therein, but made the Arch-Bishop, and the Convocation their immediate delegates so long as they saw good. Afterwards when they had done their work, *viz.* The determining the Appeal and Divorce of Queen *Katherine*, and some other matters, the same hand that gave that power took it away and gave it (not to the King or Crown) but to Delegates from the Parliament from time to time to be nominated by the King, and may as well alter the same, and settle the power elsewhere when they please. And therefore after the Appeal of the Dowager thus determined, and the sentence definitive thus settled upon Delegates: The Parliament nevertheless determined the other causes of the Marriages of the Lady *Anne Bullen*, and the Lady *Anne* of *Cleve*, the jurisdiction of the Crown never intermedling therein; so as upon the whole, it must be acknowledged, that however the King was Supreme Head of causes Ecclesiastical, yet had not the definitive sentence in Appeals, nor absolute Supremacy, but that the same was left to the Parliament. 24 *H.8. c.*12. 25 *H.8. c.*19.

Sixthly and lastly, what attempts the Parliament had met with, partly from the designs of some great men that sought their own ends, and partly from the endeavours of these Kings that sought their own height and greatness, above their peo-

ples good, hath been already related, and the utmoſt iſſue had been truly ſtated, *viz.* That the gains have come to the King's perſons, and not to their Crown, and that therein they have put their Seal to the Law, and made their ſubmiſſion to the Parliament, as touching both their perſons and power. Add hereunto, that however *Henry* the Eighth aimed much at himſelf in his ends, in two other main Intereſts that moſt nighly concerned him, yet the chief gain came to the Parliament.

The one concerned his own Wife, which however ſo nighly related to him, as next to his own perſon, and under the determination of the immediate Law of God, yet was ſo caſt upon their ſentence, as if he durſt adventure his own Soul at their direction.

The other concerned the Crown, to which he ought relation above his own perſon, which he laid down at the feet of the Parliament, ſeeking to their power to fulfil his own pleaſure: The Ball is toſſed up and down, ſometimes amongſt the iſſue
25 *H.8.c.22.* between the King and the Lady *Anne Bullen*, another while amongſt the iſſue between him and the Lady *Jane Seymor*, or ſuch
28 *H.8.c.27* as the King ſhould nominate by Letters-patents or laſt Will. After that, to the Ladies *Mary* and *Elizabeth*, to perform con-
35 *H.8. c 1.* ditions declared by the King's Letters-patents, or his laſt Will. The King then is truſted, but he hath his truſt from the Parliament, the Crown is intailed, (as it hath been ever ſince *Richard* the Second's time) but it is done by Parliament: The Reverſion is in the Clouds, but the right of Inheritance much more. The Concluſion of all is this, the Parliament by ſerving theſe Kings turns, turned their turns into their own.

CHAP.

CHAP. XXIX.

Of the power of the Clergy, in their Convocation.

THe Convocation of the Clergy, like ſome froward Children, loves not new dreſſing, though it be a gainer thereby. Before the Pope and *Henry* the Eighth were ſain aſunder, their maſters, their minds, their work, all was double; their Councils uncertain, their Concluſions ſlow in Production, and ſleight in their Fruit and Conſequence; ſometimes diſpleaſing to the Pope, ſometimes to the King, generally to themſelves; who naturally lingering after their own intereſts, were compelled to feed that body that breathed in them, rather than that wherein themſelves breathed; and ſo like hunted Squirrels, from bough to bough, were ever well tired, yet hardly eſcaped with their own skins in the concluſion. Now *Henry* the Eighth tenders them better conditions, both for eaſe and Honour, and more ſuitable to their own Intereſt; yet they are loath to accept, becauſe they had been ſlaves by preſcription.

Formerly, they were troubled with multiplicity of Summons, 1.
ſometimes from the King, ſometimes from the Pope, ſometimes from the Metropolitan, and always over-dripped by a Foraign Power, that they could propound nothing for the good of the Souls of themſelves or others, but muſt be blaſted from without; their labours loſt, their undertakings vain, and themſelves, in the concluſion, ſit down choaked in their conſciences and deſires. Now they are at no man's call, but the Kings, and 25 *H.*8. *c.*19.
that *by Writ*, *both Provincial*, and *Legate è Latere*, muſt meddle no more.

Formerly, it's taken for granted, that Kings have no Vote 2.
in matters Eccleſiaſtical, though themſelves be intereſted therein; and therefore if he will accept of a Diſme, he muſt accept it, *Statu quo*, it is granted; nor can he interpoſe his 21 *E.*4. *fol.*46.
Diſſent,

Dissent, nor do they much care for his consent: But whether the King be concerned or not concerned, what they conclude, they must maintain, *Vi & Clavibus*, although in right, his Prerogative is above theirs. Now by the Statute, the King's Vote is asserted, and a Negative Vote restored, and himself made as well Head of the Convocation, as the Church: nothing can pass there without his Concurrence, nor come to the consideration of the Parliament, without his pleasure; and thus the King hath a double Vote in every Church Ordinance: One, as in the Parliament, to pass the same as an Act of Parliament, of which I conceive the Opinion of the Honourable Judge is to be understood; the other, as a Member of the Convocation, to pass their advices to the Parliament; and therefore he might either sit in person amongst them, or by his Vicar, as *Henry* the Eighth did by the Lord *Cromwel*: By the First, the whole Kingdom was ingaged: By the Second, the Convocation only, and that as a Court only, and not the representative of the Clergy, because as they had a Spiritual relation, so also they had the Common Right of Free-men, and therefore could not be bound without the Common Consent of the Free-men.

25 H.8.c.19.

Instit. 4. fol. 323.

3. Thirdly, as their power of Convention, and power in Vote, so their Original Right of the Law making, suffered a change: formerly they depended wholly upon a Divine Right, which some settled Originally in the Pope; others, in the Prelacy, and some in the Clergy: But now they sit by a derivative power from the Act of Parliament, from which as from their Head, they receive life and power.

4. Fourthly, they suffered some change in the very work of their Convention; for though formerly they claimed power to meddle only with Ecclesiastical matters, yet that Notion was ambiguous, and they could many times explicate it more largely, than naturally. It is not to be denyed, but the matters concerning the Service and Worship of God, are of Spiritual consideration, but that such should be so strictly deemed, to lie in the way of Church-men only, is to bring all Spirits within the

Verge

Verge of Eccleſiaſtical Juriſdiction, and to leave the Civil power to rule only dead Carcaſes; much leſs can any other thing, which by preſcription hath not been of Eccleſiaſtical Cogniſance, be called Spiritual.

But to come to particulars, becauſe generals edifie not: The Convocation claimed formerly power, as Originally from its ſelf, to impoſe Rules for Government upon Church-men, and Church-Officers, and upon the Laity, ſo far as extended to their Service of God: And alſo to charge the Eſtates of the Clergy; and concerning Matrimonial, and Teſtamentary Cauſes: They claimed alſo a power to determine Doctrine and Hereſies. Yet *De Facto*, divers of theſe they never acted in that right, wherein they claimed to hold Cogniſance.

Firſt, as touching the charging of the Eſtates of the Clergy: If it was for the King's Service, they were ever ſummoned by the King's Writ, yet was not their Act binding immediately upon the paſſing of the Vote, till the Parliament confirmed the ſame; aad therefore the old form of granting of Diſmes, was, *Per Clerum & Communitatem*, as by the pleading in the Abbot of *Waltham*'s Caſe appears; for without their Concurrence, they had no power to charge any Free-man, nor to levy the ſame, but by their Church Cenſures, which would ſtand them in no ſtead. And in this, the Convocatiou ſuffered no alteration, either in Right or Power, by the change thus wrought by *Henry* the Eighth. 11 *E.* 4 *fol.* 45

Secondly, as touching impoſing Laws upon the Laity, in points of Worſhip and Doctrine, it's evident, though they claimed ſuch power, they had it not; for when all is done, they were contented at length to get the ſupport of the Statute-Laws of this Kingdom, as may appear in the particular Laws concerning the Lords Day, and proceedings againſt Hereticks, ſetling the Popedom in the time of the great Schiſm, *&c.* But now all Title of claim is quite taken from them, and all is left in the Supreme Legiſlative power of this Nation, as formerly hath been already manifeſted. 22 *H.* 6. *fol.* 14. *Per Newton.*

Thirdly,

Thirdly, as touching Matrimonial cauſes, their former power of making Laws concerning them, and Teſtamentary cauſes, is now abſolutely taken away; only concerning Matrimonial matters, they had ſo much of the Judicatory power concerning the ſame put upon them, as might well ſerve the King's own turn; 24 *H.*8. *c.* 12. and that was for determining the matter between himſelf, and the Lady *Katherine* Dowager, depending before the Arch-Biſhop *Cranmer:* For the King ſuppoſed the Pope a party; and therefore meaned not that he ſhould be his Judge: And thus, though the Clergy had acknowledged the King to be their Supreme Head; yet in this, he was content to acknowledge their Supremacy above him, to judge between himſelf and his Queen, and in other matters concerning himſelf: So as upon the whole matter, the Convocation were gainers in ſome things; in other things, they were only loſers of that, which was none of their own.

CHAP. XXX.

Of the power of the Clergy, in their Ordinary Juriſdiction.

THoſe Spirits are truly degenerate, that being ſenſible of miſery, cannot ſtir up deſires of change, although the way thereto lies open before them: and this ſhews the nature of the Romiſh yoke, that it lay upon the Spirits of Men, did intoxicate, and make them drunk with their condition; otherwiſe the Uſurpations, Oppreſſions, Extortions and Incroachments of the Popedome, upon the Biſhops Sphere, and the people under their charge, could never have provoked ſuch complainings amongſt all ſorts, in ſeveral Ages, from time to time. And now that *Henry* the Eighth, undertakes to ſet them free, ſo as they would acknowledge his Supremacy, they all

all are ſtruck dumb, till a *Premuniri* taught them to ſpeak; and ſo were ſcared into a better condition than they would have had, and into a more abſolute Eſtate of Juriſdiction, than they received from their Predeceſſors. The Pope had now uſurped a power, *ſupra* ordinary over all Appeals, gained the definitive Sentence to the Roman See, and had holden this power by the ſpace of four hundred years, and the King finding the root of all the miſchief to his Crown from abroad, ſpringing from that Principle, meaned not to diſpute the point with the Caſuiſts, but by one Statute, took away all Appeals to *Rome*, and determined Appeals from the Biſhops Court, in the Arch-Biſhop's Court, and the Appeals from the Arch-Biſhop's Commiſſary, in the Court of Audience: So as though in the King's own Caſe, the Convocation had the laſt blow; yet in matters concerning the Subjects, the Arch-Biſhop was either more worthy, or more willing with that truſt: For though the Convocation might have as well determined all, as well as the Pope; yet for diſpatch ſake of a multitude of Appeals, now depending at *Rome*, and to prevent long attendence on the Convocation, that now had much to do in matters of more publick Nature, the utmoſt Appeal in ſuch Caſes is made Provincial. This (whether priviledge or prejudice) the Eccleſiaſtical Cauſes gained above the Civil, whoſe definitive Sentence was reſerved to the Parliament. And thus is the Arch-Biſhop made Heir to the Pope, in the greateſt priviledge of a Pope, to be chief Judge on Earth in matters Eccleſiaſtical, within his own Province. A trick that in my opinion much darkned the Glory of the King's Title of Supreme Head, which the Church-men had formerly offered up to the Honour of the Crown of this Realm. For be it ſo, that the Title is in the Crown by Remitter: yet cannot the ſame carry along with it any more than a lawful power, and whether all the Pope's former power allowed him by the Canon, or gained by Uſurpation and Cuſtom, ſhall be ſaid a lawful power, or whether the power of Review by Appeal, ſhall be derived to the Crown, under the general Notion of Supremacy upon the Clergies ſubmiſſion, is to me

28 *H.8. c.* 12.

a doubt (albeit, *I must give Honour to the Judgement in Print*) in regard that after the submission of the Clergy, the matter concerning the Divorce of the Lady *Katherine* Dowager, came before the Pope by Appeal, and there depended the King himself also, waiting upon that See for Justice, and a definitive Sentence in that matter, and thereby acknowledged the Pope's power, *De facto*, Notwithstanding the Clergies foregoing submission; and being occasioned by the delay at *Rome*, he procured this Statute concerning Appeals to be made, whereby at one breath he took the Appeals to *Rome* away, and settled them as formerly hath been mentioned; all which was done two years before the Title of Supremacy was annexed, or declared for to be to the Crown, by Act of Parliament.

Inst. 4. *fol.* 344.

And therefore, as to me it appears, the power of Supreme Cognisance of Appeals was not in actual possession of the Crown by the Clergies submission; so was it actually vested in the Arch-Bishop before the Title of Supremacy was confirmed by Act of Parliament; and so it never was in the Crown actually possessed, much less had the Crown the same by Remitter: For the King's turn once served by the Convocation, and the matter of the Divorce of Queen *Katherine* settled, the King perceiving the slow Progress of the Convocation, the Members of the same not being yet sufficiently tuned to the present Affairs: And moderate Arch-Bishop *Cranmer* likewise foreseeing, that the *Odium* of these Definitive Sentences would be too great for him to bear; another Appeal is provided, more for the Honour of the Crown, to be from the Arch-Bishop to *Delegates*, to be appointed by the King, his Heirs and Successors, so as though their Nomination be the Kings, yet their power is deduced immediately from the Parliament, which took the same from the Arch-Bishop, and conferred it upon them.

A second advantage not inferiour hereto, which the Arch-Bishop gained out of the ruines of the Popedom, was the power of Licenses and Dispensations, or Faculties. In the Pope,

25 *H.* 8. *c.* 19.

Pope, it was a tranſcendent power without any rule, but what was tuned to him by the Bird in his own breaſt; and was the ground of much licenſe, or rather licentiouſneſs in the World: But in the Arch-Biſhop, they ſeem to be regulated.

To be Firſt, in Cauſes not repugnant to the Law of God. 25 H.8 c.21.

Secondly, ſuch as are neceſſary for the Honour and Security of the King.

Thirdly, ſuch as were formerly wont to be remedied at the See of *Rome*; yet in truth left as much ſcope for the Conſcience of the Arch-Biſhop to walk in, as the Pope had in former times; a large Teather and greater priviledge than ever the Crown had; by which, although the King himſelf be like *Saul*, higher by the Head than all the people, yet in many things *Samuel* is higher than he. The moving cauſe hereof is not difficult to find out: the King had but lately married the Lady *Anne Bullen*; a thing that many ſtartled at, and the King himſelf not extremely reſolved in; he would therefore have his way like that of the Zodiack, broad enough for Planetary motion of any one that could not contain himſelf within the Ecliptick line of the Law, and ſo ſhipped over the Pope's power to the Chair of *Canterbury*, and had made a Pope, in ſtead of an Arch-Biſhop, but that the man was not made for that purpoſe. What the Ordinary Juriſdiction got or loſt, we come in the next place to obſerve.

Firſt, they had ſtill their Courts and Judicatory power, but upon what right may be doubted: Their firſt foundation was laid by the Civil power of a Law, in the time of *William* the firſt *Norman* King; yet the power of the Pope and Biſhop growing up together, they came to hold the power of the the Keys by a Divine Right, and ſo continued, until theſe times of *Henry* the Eighth, wherein they have a *Retroſpect* to the Rock from whence they were firſt hewen; and many ſeem to change their Tenure, and therewith therefore are in right to change the Style of their Courts, and Title of Sum-

mons, but the times not being very curious, and the work of Reformation but in *fieri*, the more exact lineaments must be left to time to finish and beautifie. A greater blow did light upon the Law of these Courts, which was left as doubtful as the Canons; all which are now put to the question, and to this day never received full resolution, but were left to the Parliament to determine them at leisure; and in the mean time to the Judges of the Common Law, to determine the same Lawful or Unlawful, as occasion should require: Nevertheless, the Courts still hold on their course, according to their old Laws and Customs, for their form of proceedings, some say by prescription, yet more rightly by permission; it being a difficult matter to make prescription hold against a Statute Law: As touching the matters within their Cognisance the Law settled some, and unsettled others.

First, as touching Heresie, the Church-men formerly thought scorn the Lay Magistrate should intermeddle, but not being able to stop the growth thereof by their Church-Censures, prayed aid of the Civil Magistracy; so by degrees arose the penalties of Imprisonment and burning, which brought the whole matter into Cognisance before the Civil Magistrate, because no Free-man might be proceeded against, for loss of Life or Liberty, but by the Laws of the Nation; and for this cause the Civil Magistrate granted the Writ of *Habeas Corpus*, and relieved many times the party imprisoned wrongfully, or granted prohibition as they saw cause: And therefore it cannot be said rightly, that the sole or supreme Cognisance of this crime of Heresie belonged to the Clergy before these times. Nor did their proceedings upon the Writ of Burning Warrant any such thing, partly because till these times the Canon Law was the best ground that these proceedings had, and the course therein was not so Uniform as to permit the Title of a Custom to warrant the same: Conviction being sometimes by jury, sometimes according to the Canon, sometimes before the Ordinary, sometimes before the Convocation, sometimes before the King, sometimes before special

Mag. Cart.

Instit. 3. fol. 42.

ſpecial Delegates, as the Hiſtories of the Martyrs more particularly ſet forth, and no Act of Parliament poſitive in the point. But the time is now come when nigheſt Reformation, that the thing is ſettled more to the prejudice of Reformation than all the endeavours foregoing; like to the darkneſs of the Night, that is at the ſuperlative degree when nigheſt break of Day. A Statute is now made, that indeed quite blotted out the very name of the Statute of *Henry* the Fourth, *De hæretico comburendo*, but made compleat that Statute of 5 *Rich.* 2. and the other of 2 *Hen.* 5. both which were formerly neither good in Law, nor effectual, otherwiſe than by Power; and gave more ſettlement to the Ordinaries proceedings in ſuch Caſes: For the Delinquent might be convict before the Ordinary by Witneſſes, or might be indicted at the Common Law, and the indictment certified to the Ordinary as Evidence: yet did the Parliament carve them out their work; and in expreſs words declared, That opinions againſt the Authority and Laws of the Biſhop of *Rome* were not Hereſie, and by the ſame reaſon might have done more of that kind, but that was enough to tell all the World that the Parliament could define what was not Hereſie, although they did not then determine what was Hereſie: And thus the judgement of the Romiſh Church is called into queſtion, in one of their Fundamentals, and the Clergy left in a Muſe, concerning the rule upon which they were to proceed againſt this crime. 25 *H.* 8. c. 14.

The Parliament within ſix years after, undertakes, though ſomewhat unhappily, to determine and define certain points of Controverſie, which had ſome relation to the Worſhip of God, and the publick Peace, and declared the contrary to theſe determinations to be Hereſie, and the puniſhment to be Death and Forfeiture, and the trial to be before Commiſſioners by Jury on teſtimony of two Witneſſes, or by examination in the Eccleſiaſtical Court, or inquiſition in the Leet, or Seſſions of the Peace. Upon the whole matter therefore the Ordinary had a particular Power to determine Hereſie; 31 *H.* 8. c. 15.

but

but the Parliament determined ſuch Hereſies as were puniſhable, with Death and Forfeiture, by enumeration in the ſix Articles. This was the Clergies Primmer, wherein they imployed their ſtudy, as making moſt for their deſign, and laid aſide thoughts of all other Hereſies as dry Notions, or old faſhions laid aſide, and not worthy the ſetting forth to the common ſale.

Secondly, the Leſſon concerning Marriage was no leſs difficult for the Clergy to take out: They were put by their former Authority derived from abroad, and their ancient rule of the Canon Law; with the King's leave they do what they do, and where they doubt they take his Commiſſion, ſo did the ~~Arch-~~ Biſhop of *Durham* in the Caſe between *John* and *Jane Fiſher*; in the King's Caſe, the determining part is put to the Parliament's Concluſion; and for a rule in other Caſes, ſome perſons are enabled to marry, which formerly were not, *viz.* Maſters of the Chancery, and Doctors of the Civil Law; and ſome forbidden Marriage, as all Prieſts by the Statute of the ſix Articles. And unto the reſt concerning degrees of Conſanguinity, or Affinity, a particular enumeration is appointed to be obſerved; within which, Marriage is declared unlawful, all other further off are made lawful. In all which regards the Cogniſance of Matrimonial Cauſes is theirs only by leave.

35 *H.* 8. *Rat. Pat. p.* 15.
15 *H.* 8. *c.* 8.
37 *H.* 8. *c.* 17.
28 *H.* 8. *c.* 7.
32 *H.* 8 *c.* 38.

Thirdly, Reſidency, and Non-reſidency, was a Theme formerly learned from the Canon Law, in which as alſo in the thing it ſelf, the Clergy were the only skilful men. The rule of the Canon Law was ſtrict enough, conſidering the times, but it was not ſteel to the back. The Parliament now undertakes the cauſe; and though it gave, in ſome reſpects, more liberty than the Canon, yet ſtood it better to its tackling, and kept a ſtricter hand upon the reins, than was formerly uſed, and by giving a general rule for Diſpenſation, took away all arbitrary Diſpenſations, and Licenſes, which were formerly granted beyond all rule, but that of Silver or Gold; and made all practiſes contrary to the rule, damageable to the party. Thus far concerning the matters in Cogniſance; now touching the power

21 *H.* 8. *c.* 13.
25 *H.* 8. *c.* 16.
28 *H.* 8. *c.* 13.

power of the Keys, Engliſh Prelacy having laid aſide the pretentions of *Rome*, they put the World to a gaze, to ſee which way they would go. In the innocent infancy of Prelacy it was led by the hand by the Presbytery, and would do nothing without them; afterwards having gained ſome degree of height and ſtrength, they entred themſelves to be Chariot Horſes to the Roman Sun, till they had ſet all on fire; now unharneſt, it is expected they ſhould return to their former wits; nevertheleſs forgetting their ancient yoke fellows, the rural Presbyters, they ſtable with the King, uſe his name ſometimes, but more often their own; ſerving him with Supremacy, as he them with Authority beyond their Sphere; they raiſe him above Parliament, he them above Councils; ſo as they do what they liſt, let the Plebeian Presbyter will or nill; they are the only numeral Figures, and the other but Ciphers to make them, *Omnibus numeris abſoluti*: Nevertheleſs, the Canon ſtill remains the ſame, *Epiſcopi ſe debent ſcire Presbyteros, non Dominos, nec debent in clerum dominari, Epiſcopus ſe ſedente non permittat Presbyterum ſtare. Epiſcopi noverint ſe magis conſuetudine quam diſpenſatione Presbyteris majores*, Kings may make them Lords, but as Biſhops they hold their former rank aſſigned by the Canon; as Lords, the King never gave them the Keys, and as Biſhops the Canon did not; yet as under the joynt Title of Lord Biſhops, they hold themſelves priviledged to get what power they can; two things they reach at, *viz.* The abſolute power of Impriſonment, and of Excommunication in all cauſes Eccleſiaſtical. The common Law would never yield this; ſome Statutes in ſome caſes did pretend.

Antiq. Brit.

Diſtin. &c. c. 5. *Eſto* & 3. c. *Ead. Diſt. Epiſcopus.*

Inſtit. 3. *fol.* 40.

Firſt, as touching Impriſonment, the Statute of *Henry* the Fourth concerning Hereſie doth liſpe ſome ſuch power; of what force the ſame Statute is, hath been already obſerved; in caſe of incontinency of Church-men, it is more directly given them by a Statute in *Henry* the Seventh's time, before which time the Statute it ſelf doth intimate, that an Action did lye againſt them for ſuch Impriſonment, which Law alſo

1 *H* 7. c. 4.

so was made useless by another in *Henry* the Eighth's time, who gave way to Statutes for the punishing them at the common Law.

31 *H.*8.*c.*14. First, with Death, which continued for some Months, and
32 *H.*8. *c.*10. that being found too heavy, it was punished by another Law, with Forfeiture and Imprisonment. And the same King likewise gave way to a Law for the like punishment in case of Heresie. By that Law that revoked the Statute of *Henry* the
*p.*237. Fourth formerly mentioned, although till trial, the same was bailable: And thus continued till the time of *Edward* the Sixth.

But as touching Excommunication, it was to no purpose for them to struggle, the common Law would never permit them to hold possession quietly; but did examine their
14 *H.*4. *c.*12. Authority, granted prohibition, enjoyned the Ordinary
30 *E.*3. *Ass.* 19. to grant absolution where it saw cause: nevertheless in
22 *E.*4. *f.* 29. some cases *Henry* the Eighth gives way to some Statutes, to
*Hil.*13. *H.*7. allow them this Power, as in the levying of Tenths. In the
pl 15. next place the Prelacy had not this Ecclesiastical Jurisdiction
26 *H.*8. *c* 3. in themselves, so as to grant it to others, but the Parliament did dispose thereof, not only to Bishops, but to Chancellors, Vicars general, Commissaries, being Doctors of the Law, and
37 *H.*8. *c.* 17. not within holy Orders, and limiting their Jurisdiction in cases concerning the Papal Jurisdiction; and their manner of sending their Process and Citations, to draw men from
23 *H.*8. *c.* 9. their proper Dioceſs, and also their inordinate Fees in Cases Testamentary. The Prelates therefore might possibly make
21 *H.*8. *c.*9. great claim hereof, for generally they were still of the old stamp, loved to have all by Divine Right, and lived, they cared not by what wrong: But the Laity inclining too much to the new Religion, as then it was termed, refused to yield one foot unto their pretentions: And so like two Horses tied together by their Bits, endeavour after several courses, ever and anon kicking one at another, yet still bestrode by a King that was joynted for the purpose; and so good a Horse man that neither of them could unhorse him, till Death laid him on the ground. And thus was the Roman Eagle deplumed, every

every Bird had its own Feathers, the great men the Honours and Priviledges, the meaner men the Profits, and so an end to Annates, *Legatine levies*, *Peter-pence*, *Mortuaries*, *Monasteries*, and all that Retinue, the vast expences by Bulls and Appeals to *Rome*, to all the cares, expences, and toil in attendance on the Roman Chair: The beginning of all the happiness of *England*.

CHAP. XXXI.

Of Judicature.

THese two Kings were men of towring Spirits, liked not to see others upon the Wing, in which regard it was dangerous to be great, and more safe not to be worthy of regard: Especially in the times of *Henry* the Eighth, whose motion was more eager: and there was no coming nigh to him, but for such as were of his own train, and would follow as fast as he would lead; and therefore generally the Commons had more cause to praise the King for his Justice, than the Nobility had. Both the Kings loved the air of profit passing well (but the later was not so well breathed) and therefore had more to do with Courts, which had the face of Justice; But behind were for the King's Revenue: Such were the Court of Requests, of mean Original, mean Education, yet by continuance attained to a high growth: The Court of Tenths and first Fruits: The Court of Surveyors: The Court of the Lord Steward of the Houshold: The Court of Commission before the Admiral: The Court of Wards: The Court of the President of the North: The Prerogative Court: The Court of Delegates: The Court of Commission of Review: Others of more private regard: And (that which might have given the name to all the rest) the Court of Augmentation. Besides these there were some in *Wales*; but that which concerned more the matter of Judicature, was the loss of that grand Liberty of that Country, formerly a Province belonging to this Nation,

28 H. 8. c. 3 and now by *Henry* the Eighth incorporated into the ſame, and made a Member thereof, and brought under the ſame Fundamental Law; a work that had now been long a doing, and from the time of *Edward* the Third brought on to perfection be degrees.

Firſt, by annexing the Tenure of the Marches to the Crown: Then upon occaſion of their Rebellion by loſs of many of their wonted Liberties. Afterwards *Henry* the Eighth defaced the bounds of divers the ancient Counties, and ſetled them anew, and the bounds of the Marches alſo, and appointed Pleas in Courts of Judicature to be holden in the Engliſh Tongue.

And laſt of all reunited them again to the Engliſh Nation, giving them vote in Parliament, as other parcel of the Engliſh Dominions had. True it is, that from their firſt ſubmiſſion, even unto *Edward* the Firſt, they were ſummoned unto Parliament, and had vote there, but only in order to the Intereſts of their own Country, now and henceforth they poſſeſs one and the ſame vote as Engliſh men. Secondly, as Courts and Judicatories multiplied, ſo ſome alſo of thoſe that were ancient enlarged their Juriſdiction, eſpecially ſuch of them as moſt nighly related to Perogative; amongſt others, the privy Council leads the way: Who now began to have too much to do, in a double capacity, one at the Council Table, the other at the Star-Chamber: For now their Power began to be diverſly conſidered. In their firſt capacity they had too much of the Affairs of the Common Pleas, in the later they had too much of the Crown Pleas; both of them ſerving rather to ſcare men from doing wrong, than to do any man right. And therefore though ſome men might ſeem to have ſome recompence, yet the greateſt gain fell to the King and his Courtiers, and thus became Majeſty, or State, or Prerogative, to be more feared than beloved. What the Power of the Council was formerly, hath already been manifeſted, that which both theſe Kings conſpired in, and whereby they gained more power over the people

Rot. Claus. 20 E. 2. M. 3.

15 E. 2. *In Derſ. M.* 13.

people than all their Predeceſſors, was this, that other Kings ſtood too much upon their own leggs, theſe leaned much upon the Lords, and gained the Lords to ſtick cloſe to them; and in this they had both the Kings Love, and the Peoples Leave, who now disjoynted upon ſeveral Intereſts, eſpecially that of Religion, muſt be contented to let go that which they had no heart to hold. And thus they obtained a Judicatory Power over the people; like that of great men whoſe cenſures are commonly above capacity, and not like to that of the Peers. This was begun in *Henry* the Seventh's time, who taking occaſion to complain of corruption and neglect in ordinary Trials of the common Law gets the people to yield to the Council, or ſome of them, a Power of *Oier* and *Terminer*, by examination upon Bill, or information in matters concerning Maintenance, Liveries, Retainders, Embraceries, corruption in Sheriffs and Juries, Riots, and unlawful Aſſemblies, crimes all of them of the ſame Blood with Rebellion, which the King as much hated as the thought of his Title to the Crown; and therefore would have it feared, as much as the puniſhment by ſuch a mighty Power, and a Trial of a dreadful Nature could effect. A Trial, I ſay, wherein both the guilty and the guiltleſs adventure their whole Eſtates, againſt the edge of the arbitrary wills of great men of unknown Intereſts, in an unknown way, at unknown places; having no other aſſurance, how, or when to come off, but a Proclamation to tell the people, that the King above all things delighted in Juſtice. A bitter pill this was for the people to ſwallow, yet it was ſo artificially compoſed, that at the firſt taſte it gave a pretty relliſh, the King delights in Juſtice, the Chancellor hath his Conſcience, the Arch-Biſhop brings Religion, the Judges bring Law, ſo as it's probable nothing will be done, but according to Juſtice, Conſcience, Religion and Law; a very fair mixture, but that there was a Treaſurer in the Caſe; yet the ſucceſs anſwered not expectation, the perſons offended were many times inferiour, and their Eſtates not great, the Offenders more mean, and of deſperate fortunes; for great men were too wiſe to try this new way, or to taſte of their entertainment. Therefore within

3 *H.7. c.1.*

4 *H.7. c.12.*

nine years the Judges of Assize are betrusted with all, and that Court so continued for as many years more; and then the King
11 H.7. c.3. marked out one crime amongst the rest for his own tooth, belonging to the great men only, for they are only to commit the crime, and to give recompence suitable to the King's Appetite: It is giving of Liveries, and Retainders, a sore evil in the eyes of a jealous King, tending to draw the inferiour sort to honour and admire, and be of the suit of those of the greater sort, and then beware the Crown. These therefore must be tried before the King himself and his Council, that he may know whom he
19 H.7. c.41. is to fear, and of whom to take heed. And hereupon is a strange power given, to summon upon a meer Suspicion: To proceed without Information: To examine the Defendent upon Oath, and make him his own Accuser. To punish according to discretion, by Fine and Imprisonment: and thus the King and his Council have gotten a power under colour of Liveries and Retainders, to bring the whole Kingdom to be of their Livery, or else they can suspect whom they please, apprehend whom they suspect, put him presently to the rack of confession, and so into prison, till he hath satisfied both displeasure, and jealousie, and covetousness it self. Never was *England* before now in so low a degree of thraldom, bound under a double knot of self-accusing, and arbitrary Censure, and this out-reached, not only in matters meerly Civil, tending to the common Peace, but was intruded also into matters Ecclesiastical in order to the Peace of the Church. All bound unto the good behaviour, both in Body and Soul, under peril of loss of all that a man hath dear to him in this World. The plot of all this was laid by *Henry* the Seventh, and was followed by *Henry* the Eighth, who put that into practice (which his Father had in design) being led thereto by such a skilful Guide as Cardinal *Woolsy* was, who, though of mean Birth, yet of a Spirit above a King, and equal to the Popedom, strained the string of Prerogative to its utmost height, and then taught the King to play thereon; which he did after his blunt manner till his dying day. And thus though the Clergy are brought a peg lower, and the Nobility advanced higher, yet was it the policy of these Kings to make

them

them all of their own Livery and Retainderſhip, to keep them in an upper region, looking on the poor Commons at a diſtance far below; and well it was for the Commons thus to be, till the influence of theſe blazing Stars grew cooler.

CHAP. XXXII.

Of the Militia.

IT may fall within the verge of opinion, that the guilty Title of *Henry* the Seventh to the Crown of *England*, gauled his mind with jealouſie, the greateſt part of his Reign: Whether it were that he had not declared himſelf ſo fully upon his Title by his Wife, or that as yet he feared ſome unknown *Plantagenet* would ariſe and put his Crown to the queſtion: This made him skilful in the point of Fortification (wherein he likewiſe ſpent the greateſt part of his Reign) not ſo much by force of Arms (for he cared not much for that noiſe, well knowing that Peace is the ſafer condition for a King that comes in by power) but principally by way of gaining conceſſions and acknowledgement from the Subjects, a Muſick that he much delighted to hear, well knowing it would conclude thoſe amongſt them that knew too much, and inſtruct them that knew too little; and ſo in time he ſhould paſs for currant amongſt them all. It was no hard matter for the King to accompliſh this, the greater part of the Kingdom being pre-ingaged unto his Title, and of them many depending upon him for livelihood, if he failed, they muſt look to loſe all. But the preſent occaſion urged more importantly; the Title to the Crown was already put to the queſtion, by the pretenſions of one that named himſelf Duke of *York:* And it's now high

high time for the Law to declare it self, to direct the people in such a Case: What shall the people do where Might overcomes Right, or if days come like those of *Henry* the Sixth, wherein the Subjects should be between two Mill-stones, of one King in Title, and another King in possession, for whom must they take up Arms? If for *Edward* the Fourth, then are they Traitors to *Henry* the Sixth; if for *Henry* the Sixth, then are they Traitors to *Edward* the Fourth; and so now, if for *Henry* the Seventh, then they may be Traitors to the Duke of *York*; if for the Duke of *York*, then are they Traitors to *Henry* the Seventh. For though the Duke of *York* was said to be but a contrivance of the House of *Burgundy*; yet a great part, both of the great men and others were of another opinion, and the King himself was not very certain of his condition for the space of six years thereby. This puts the Title of Allegiance, and that power of the Militia to the touch: at length both King and Parliament come to one Conclusion, consisting of three particulars.

First, that the King, for the time being (whether by right or wrong) ought to have the Subjects Allegiance, like to that of the wise Councellor, of that brave King of *Israel*, *Whom the Lord and his People, and all the men of* Israel *chuse, his will I be.* And this is not only declared by the expres words in
11 *H.7. c.1.* the Preface of the Law, but also by the King's own practice: for he discharged such as aided him against *Richard* the Third
1 *H.7. c. 6.* then King, by pardon by Parliament; but such as aided him being King, by Declaration of the Law.

Secondly, that this Allegiance draweth therewith ingagement for the defence of that King and Kingdom.

Thirdly, that the discharge of this Service, whereto the Subjects are bound by Allegiance, ought not to be imputed unto them as Treason: Nor shall any person be impeached or attainted; therefore the first and the last of these need no dispute.

The

The second is more worthy of consideration, in the particular words set down in the Statute, *viz. That the Subjects are to serve their Prince in his Wars, for the defence of him and the Land, against every Rebellion, Power and Might, reared against him, and with him to enter and abide in Service in Battel.* Wherein two things are to be considered, the service, and the time or occasion.

The Service, is to serve the Prince in his Wars, and with him to enter and abide in Service in Battel; which is the less to be stood upon, because there is a condition annexed; if the case so require, which must be determined by some Authority, not particularly mentioned, albeit, that whatsoever is therein set down, is only by way of supposal in a Preface annexed to the Law by the King, and permitted by the Commons, that were as willing the same should be allowed, as the King himself, both of them being weary of Wars, and willing to admit this Conclusion for the better security of them both in these doubtful times. But to lay all these aside, for the Case is not stated, till the Cause be considered. All this must be only when and where the King's Person and Kingdom is indangered by Rebellion, Power or Might, reared against him. So as the King's Person must be present in the War for the defence of the Kingdom, or no man is bound by his Allegiance to hazard his own Life, and then this point of Allegiance consisteth only in defending the King in the defence of the Land, or more particularly in defending the King's Person, he being then in the defence of the Land, and defending him in order to the defence of the Land. So as no man can rationally infer from hence, that the King hath an universal power of Array when he pleases, because the King, when he pleases, may not levy War, nor make other War than a defensive War, when the Land is indangered, or when need shall require, as another Statute hath it. But who shall determine this need or danger, neither in these or any other Laws is mentioned; either out of want of occasion, or by reason of the tenderness of the times, wherein both Prince and People were willing to decline the question. 11 *H.7 c.*18.

Secondly,

Secondly, the persons that are to do this service, are to be considered of, and although they are indefinitely set down under the word Subjects, it may be supposed, that the word is not to be taken in so large a sense, as to comprehend all of all Ages, Sexes, Callings and Conditions; in regard that even by the Common Law, some of each of these sorts are discharged from such service. But it may seem, the King was neither satisfied with the oppressions of this first Law concerning the occasion or time of this Service; nor did he see sufficient ground under the Notion of bare Allegiance to desire more: New ways are by him found out, his Patentees were not a few, and although few or none could ever boast much of any cheap purchases gained from him (for he was wont to be well paid before-hand for his Patents, either by Money, or that which was as beneficial to him) yet he was resolved, that their holding should be no less advantagious to him, than their having; and therefore in plain words he lets them know, that notwithstanding former consideration, upon which they had their Patents at the first, they must fight for him, if they will live upon him; and either adventure their Lives or their Benefit, chuse they which, and if they find fault with their condition, he touches them with the Law of their Allegiance: and thus he makes way to intimate a claim of a more absolute Allegiance, for being to shew the Equity of the Law, in regard of their Allegiance, he tells them that every Subject is bound by his Allegiance to serve and assist his Prince and Soveraign Lord, at all seasons when need shall require; general words, that affirm nothing in certainty, yet do glance shrewdly upon an absolute and universal assistance: Then coming to drive the nail home; it is said that the Patentees are bound to give their attendance upon his Royal Person, to defend the same when he shall fortune to go in his person to Wars, for the defence of the Realm, or against his Rebels and Enemies; (and as another Statute addeth) *within the same Realm, or without, and according to their Allegiance, and not to depart without especial License, or until general Proclamation of dismission.* In short therefore here is a new Militia, as touching the

11 H. 7. c. 18.

the King's Patentees, they muſt attend the Kings Perſon whither ever the King will lead them, either within the Realm, or without; whether againſt ſuch as he will ſuppoſe to be his Enemies abroad, or if he will miſtake his Subjects for his Enemies at home: And this under the colour of Allegiance, publiſhed in doubtful expreſſions; as if it were not meet that *Henry* the Seventh (that loved not to yoke himſelf to the Law) ſhould yoke his ~~Laws~~ under the Laws of plain language: Or rather that he held it a point of policy to publiſh his Laws in a doubtful ſtile, that ſuch as durſt queſtion his Laws might have no poſitive charge againſt them; and ſuch as dared not to enter into the liſts with him, might not be bold to come nigh the breath of them. Nevertheleſs, neither doth the glance of Allegiance in the Preface of the former, nor in the body of the later Statute any whit confirm, that what is in them enacted, is done upon the ground of Allegiance, but contrarily when as the firſt Statute cometh to the point, it ſtartles from the ground of Allegiance, and flies to the ground of a kind of Equity or Reaſon. And the ſecond reſorteth to the firſt as its proper ground, as being a ſupplement thereunto in Caſes forgotten, and ſo omitted; though it may be rather thought that the King creeping up into his height by degrees, made the former only as an eſſay to prepare the way for the later, like the point of the Wedge that maketh way for the bulk and body thereof. The truth of this aſſertion will be more manifeſt from the nature of both theſe Laws, being limited, both in regard of time and perſon. In regard of time, for both theſe Laws are but temporary, and to continue only during the Life of *Henry* the Seventh, in regard the advancements therein mentioned, as the moving cauſe, are only the advancements made by himſelf. In regard of the perſon, for all perſons that received advancements from him, are not bound thereby, namely thoſe that come in to ſuch advancement by purchaſe for Money: Neither are Judges and other Officers excepted perſons in the ſaid Statutes. If therefore Allegiance had been the ground of theſe Laws, it had equally bound all who are under the Bond, and no Equity could

11 *H.7 c.* 18.

19 *H.7. c.*1.

have given a general Rule of discharge unto such condition of men: It had likewise bound as well formerly and afterwards, as during this King's Reign, and therefore what ever semblance is made therein concerning Allegiance, there had been no need of such Law, if Allegiance could have done the Deed, or if the power of Array had been of that large extent, as it hath lately been taken. In my conceit therefore, these two Laws do hold forth nothing that is new, but a mind that *Henry* the Seventh had to fill his Coffers, though his mind would not so fill; he would have Soldiers, but they must be his Patentees, not for any skill or valour in them above others, but he hoped they would compound with him for Licenses to absent, rather than to adventure themselves, and so he might get the more Money that could find pay for Soldiers more and better than they were or would be; for otherwise the Patentees might by the Statute have been allowed to serve the King by their Deputies, which would have done the King better Service in the Wars, than themselves could have done, and for this very purpose, much use was made of these Statutes, as well by *Henry* the Seventh, as *Henry* the Eighth, both for Licenses and Pardons, for composition in such Cases, as their Records do plentifully shew.

Secondly, let the Claim of Kings be what they will, yet the matter in fact shews plainly that they never had possession of what they claimed: Both these Kings pretended a Foraign War, each of them once against one and the same Nation, and to that end advanced to one place with their Armies; although the one went in good earnest, the other in jest: Their Armies were not gathered by Prerogative, but of Voluntiers, this not only the Records, but also the Statutes do clearly set forth. Some Soldiers served under Captains of their own choice, and therefore the Law inflicteth a penalty upon such Captains, as bring not their number compleat, according to their undertaking, other Soldiers are levied by Commission, by way of Impress, which in those days were Voluntiers also, and expecting favour from the publick, the rather because they devoted themselves

7 *H.* 7. *c.* 1.

ſelves thereto without relation to any private Captain; willingly therefore received impreſt Money: And of this courſe the State ſaw a neceſſity, both for the better choice of men, and for the more publick owning of the work: For ſuch as had been uſually levied by the Captains, were fit only to fill up room, and make up the number, and yet many times there was a failing in that alſo; and this manner of raiſing the Infantry was continued by *Henry* the Eighth, as by the like Law in his time may appear. As touching the levying of the Horſe, although divers Statutes were made for the maintenance of the breed of Horſes, and Perſons of all degrees of ability, were aſſeſſed at the finding and maintaining of a certain number of Horſes, yet do none of them tell us that they ſhall find and maintain them armed compleatly for the Wars, nor ſhall ſend them forth upon their own charge, and therefore I ſuppoſe they were raiſed as formerly; theſe two Kings had the happineſs to be admired, the one for his ſhrewd cunning Head, the other for a reſolute and couragious Heart: And it was no hard matter to find men that loved to ingratiate themſelves, and endeavour to catch their favour, though with the adventure of their Lives, eſpecially if they looked after Honour and Glory, which as a Crown they ſay pitched at the Goal of their Actions.

5 H.8. c. 5.

32 H.8.c.13.
33 H.8 c.5.

Thirdly, concerning the pay of the Soldier, the Law was the ſame as formerly, the ſame was aſcertained by the Statute-Law; the payment was to be made by the Captain, under peril of Impriſonment, and forfeiture of Goods and Chattels, and the true number of the Soldiers to be maintained and liſted, under the like peril.

7 H.7. c. 1.
3 H.8. c. 5.

Fourthly, as touching the Soldiers ſervice, the ſame courſe alſo was taken as before; if they diſſert their Colours, they ſhall be puniſhed as Felons, and the manner of trial to be at the Common Law.

Fifthly, for Fortifications, the power properly belongeth to

the Supreme Authority, to give order therein: For the people may not fortifie themſelves (otherwiſe than in their particular Houſes, which are reputed every man's Caſtle) becauſe publick Forts are enemies to the publick Peace, unleſs in caſe of publick danger; concerning which, private perſons can make no determination. And furthermore, no Fortifications can be made and maintained, without abridgement of the Common Liberty of the people, either by impairing their Free-hold, or exacting their labour, or other Contribution, none of which ought to be done, but by publick Law; and therefore when the Inhabitants of the County of *Cornwal* were to make defence againſt Invaſion and Piracy, from the Coaſt of *Little Britain*, in regard they were a long ſlender County, and upon ſudden ſurpriſals people could not ſo readily flock together for their joynt defence, they obtained an Act of Parliament to give
4 *H.8.c.1.* them power to fortifie the Sea-coaſts, according to the direction of the Sheriff and Juſtices of the Peace.

Laſtly, Wars once begun, muſt be maintained at the charge of the undertakers: If they be the King's own Wars, he muſt maintain them out of his own Treaſury, till the benefit of them do prove to the common good; and in ſuch caſes the charges have been ſometimes provided before the work, by Act of Parliament, and ſometimes after.

Henry the Seventh, and *Henry* the Eighth, both of them at their ſeveral times went to *Boloigne* with their Armies: *Henry* the Seventh with an intent to gain profit to himſelf by an advantagious peace, and had his ends therein, and was aſhamed to ask aid of the people towards the charges of that War.

Henry the Eighth went upon his own charge alſo with his Army, truſting to the Parliament for conſideration to be had of his imployment (wherein his expectation did not fail) and in his abſence, made Queen *Katherine* General of all the Forces of *England* in his abſence, and gave her power, with other five Noble Perſonages, to take up Money upon Loan, as occaſion ſhould

ſhould require, and to give ſecurity of the ſame, for the maintaining and raiſing of Forces, if need ſhould require, as is more particularly ſet forth in the Patent Rolls of theſe times. Nevertheleſs, the War at Sea, *Infra quatuor maria*, was ever reputed Defenſive as to the Nation, and under the publick charge, becauſe no War could be there, but an Enemy muſt be at hand, and ſo the Nation in eminent danger; and therefore the maintenance of the Navy Royal in ſuch Caſes, was from the publick Treaſury.

To conclude therefore, if the Parliament and Common Law in all theſe Caſes of Levies of men for War, payment of Soldiers, and their deportment, in caſes of Fortifications, and of maintenance of Wars at Sea, and the deportment of ſuch as are imployed therein; I ſay, if they give the Law, and carry the Supreme Directory, then certainly the Law rules in that, which ſeems moſt lawleſs; and though Kings may be chief Commanders, yet they are not the chief Rulers. *7 H. 8. c. 2. 23. cap. 7. 32. cap 14.*

CHAP. XXXIII.

Of the Peace.

PEace and War Originally depend upon the ſame power, becauſe they relate each to other, as the end to the means, and receive motion from one and the ſame Fountain of Law, that ruleth both in Peace and War: It is very true, that ſeveral Ages hitherto have been troubled with arbitrary exhalations; and theſe very times whereof we now treat, are not altogether clear from ſuch an air. Two Kings we have at once in view, both of them of an elate ſpirit; one working more cloſely by cunning, the other more openly by Command, yet neither of them pretending ſo high as to do all, or be all in all. Peace ſuited more

more with *Henry* the Seventh, than with his Son, who delighted to be accounted terrible, rather than good; yet both of them were glad enough to be at peace at home, and were industrious to that end, though by several means. *Henry* the Seventh pretended Justice and Peace (a welcome news to a people, that formerly accounted nothing theirs, but by the leave of the Soldier) and therefore sets upon the Reformation of the Sheriffs Courts, in the entring of Plaints, and making of Juries suitable to that present time, wherein men of Estates were very scarce, and much of the Riches of the Nation evaporated into the Wars, both Civil and Foraign; although the continuance of that order concerning Juries in the succeeding times of opulency, hath brought these Courts into contempt, and made way thereby for the King's Courts to swell in Glory, and to advance Prerogative, even above it self.

11 *H.7.c.15.*
19 *H.7.c.16.*

Secondly, he reforms Goals, as well in their number as their use: During the Civil Wars, every small party of men that could get a strong place, made the same, not only a Castle, but a Goal, and usually imprisoned and ransomed at their own pleasure: For remedy whereof, *Henry* the Seventh restores all Goals to the Sheriffs, saving such as hold by Inheritance; and gives power to two Justices of the Peace, one being of the *Quorum*, to take Bail in Cases bailable, and Recognisances of the Peace, to be certified at the next Sessions, or Gaol-Delivery.

19 *H.7.c.10.*
3 *H.7.c.3.*
3 *H.7.c.1*

Thirdly, both Kings concurr in providing against such disorders, as more immediately did trench upon the publick Peace, and reached at the Crown it self, by labouring to prevent by severe punishing; and lastly, by regulating the proceedings of Judicature in such Cases.

These disorders were two; inordinate wearing of Liveries, and unlawful Assemblies: The first being in nature of unlawful assembly of minds and spirits of men, the second of their bodies and persons: Both these had formerly been provided against, but the Judges of the Common Law, unto whose Cognisance these

theſe Crimes were holden, did reſtrain their puniſhments to the Rule of the Common Law, then thought to be too facile and mean for diſorders, that did flie at ſo high a pitch; and therefore they are reduced before a higher tribunal, as matter of State, as hath been already mentioned. The ſeverity of puniſhment conſiſted not ſo much in aggravating the pain, as the Crime, matters of injury being made Felonies, and thoſe Treaſons.

3 *H.* 7. *c.* 1. *p.* 244
19 *H.* 7. *c.* 14.

This Crime of Treaſon, at firſt it concerned matters acted againſt the Nation, afterwards it reached to matters acted againſt the King; now it reacheth even to the very thoughts and imaginations of the heart, not only of bodily harm to the King, but of the Queen or their heirs apparent, or tending to deprive them of their Title or Name of Royal Eſtate: This Crime was formerly made but Felony by *Henry* the Seventh, and then only extended to ſuch offence committed by one of the Kings Houſehold againſt the Perſon of the King, or a Lord, or any of the Council, Steward, Treaſurer, or Controller; ſo as the Perſon of the Queen was not then in the Caſe, and yet then newly Crowned, and at that inſtant bearing in her Womb the Royal Seed, which was then the only earneſt of the ſtability and glory of *England*; and therefore it is a ſubject of wonderment, unleſs it were out of extremity of Jealouſie, leſt he ſhould ſeem to make too great account of her Title, and thereby diſparage his own; and then is it a piece of wit, but not without weakneſs; for he that is jealous of the ſlightings of other men, ſhews himſelf unreſolved in his own pretenſions. Now *Henry* the Eighth, not only raiſed the price, but added to the thing, and not only putteth the Queen, but the Prince or Heir apparent into the Caſe, making the ſame Treaſon: So as it implyeth, that Engliſh Allegiance tyeth the Subject, not only to the ſafety of the Perſon of the King, but alſo to Queen and Heir apparent; otherwiſe the offence is made and declared Treaſon againſt the King.

26 *H.* 8. *c.* 13.
3 *H.* 7. *c.* 13.

Secondly, the Election of the Object is to be conſidered, for whether

whether the one or other Statute be obſerved, it will appear that although the King was the next object expreſſed, yet a further was intended, and that the Crime is not intended, in regard of his natural Capacity as a man, but of his politick Capacity, and in relation to the Common good of the Nation, and this is evident, not only from the ſeveral Prefaces of the Laws, but alſo from the manner of Election, whereby the Title of Heir apparent is taken up, and not the Eldeſt Son or Daughter, or theſe, and not the other Children, all which are equally dearly beloved in Natural regard.

Thirdly, though at the Common Law Treaſon be properly a Crime againſt Allegiance, yet as in Caſes of Felony Crimes may be by the Statute made as Treaſon, which at the Common Law are not againſt the Legiance of an Engliſh man, for this remaineth ever one and the ſame, but one and the ſame fact may be made Treaſon, and unmade by the Statute-Law, as befel this Law of *Henry* the Eighth, by a Law within twenty years after; like as alſo in former times, one and the ſame fact hath many
28 *H.* 8. *c.* 18. times received the like meaſure. Other Treaſons beſides theſe already mentioned were by *Henry* the Eighth created, as Marriage with any of the King's Siſters, Daughters or Aunts of the Father's ſide, or the Daughters of his Brethren or Siſters, without
4 *H.* 7. *c.* 18. conſent firſt had of the King: Counterfeiting of currant Money, not of the King's Coynage, was likewiſe made Treaſon by *Henry* the Seventh, who was well ſeen in that Myſtery or Mo-
27 *H.* 8. *c.* 2. ney-Trade, and the like alſo became of Counterfeitures of the King's Privy Signet and ſign manual.

22 *H.* 7. *c.* 9. And laſtly, that horrid trick of poyſoning was reduced to this Category, rather that the Penalty might be more terrible in the Death (which was by boyling) than for any Tincture in the Nature of the Crime, or in any Forfeiture of Eſtate.

33 *H.* 8. *c.* 8. The policy of theſe times thus irritated againſt Treaſon, had proved very irregular, if the ſame had not been as rigid in Caſes

Caſes of Felony: divers new ones of that kind are alſo dubbed, amongſt which Conjuration or Witchcraft comes firſt; an old Felony in the Saxons time, but ſince had gotten its Clergy, now well nigh for the ſpace of five hundred years, and they it, ſo as it never walked abroad amongſt the Laity, but under the favour of the Cloyſtered people, nor ever came before the Civil Power, till now *Henry* the Eighth brought it forth into its own ancient and proper Regiment. Other Crimes being thoſe of the ſeaſon are made into the ſame degree: Such as were taking of women into captivity; unlawful huntings with diſguiſes, malicious breaking of the Dikes and Banks in *Marſhland*; Servants embezzelling their Maſters Goods, to the value of forty ſhillings or upward, which (beſides that of Hereſie, whereof formerly) though of a new ſtamp, yet of ſo good a conſtitution, that they remain unto this day under the ſame brand.

3 *H.7. c. 2.*
1 *H.7. c.1.*
22 *H.8. c.11.*
21 *H.8.c.7.*

But let the Laws be never ſo ſevere, if they have not free liberty to walk at large, they are ſoon ghoſtleſs, and therefore theſe two Kings, eſpecially the later, gained that Honour above their Predeceſſors, that they gave the Law a free and full ſcope over all perſons but themſelves, and their Aſſignees, and in all places. Firſt, concerning places, every one knows the Notion, but few conſidered the extent of Sanctuary Ground in *England*, that could Sanctifie any Crime or Criminal perſon in ſuch manner, that though the eye of Juſtice could ſee, yet the hand of Juſtice could never reach them, till *Henry* the Eighth plundered them of all their Sanctity, and made all places common, ſo as no Treaſon could hide it ſelf, but where the Act of Parliament did appoint, and turned their names from Sanctuaries to priviledged places. The ſanctity of the perſon was yet more miſchievous and hard to be reformed, it had been often attempted before theſe times with little ſucceſs. *Henry* the Seventh gained ſome ground herein beyond his Anceſtors; the Delinquent might have his Clergy once, but not the ſecond time (though he fled to the horns of the Altar) and was ever after known by a

26 *H.8. c.13.*
27 *H.8. c.19.*
32 *H 8 c 12.*
4 *H.7 c 13.*

brand in the hand. Thus far did *Henry* the Seventh go, and would have done more even as far as unto thoſe in Holy Orders. But *Henry* the Eighth coming on, in point of Treaſon,
23 *H.8. c.1* made all perſons common without reſpect of their orders or profeſſion. Death makes an equal end of all. In Caſes of
4 *H.8 c.12.* Murther, Robbery, Burning of Houſes, Fellonies done in holy Ground, High-Way, or Dwelling-Houſe; refuſal of Trial;
25 *H.8. c.3.* peremptory challenge of above twenty of the pannel; Servants imbezzelling their Maſters Goods in value forty ſhillings or upwards; in all theſe Caſes no Clergy could be allowed, but
23 *H.8. c.1.* to perſons in Holy Orders, and thoſe alſo to be perpetually Impriſoned in the Ordinaries Priſon; and yet this exception held not long in force, but theſe men alſo were equally wrapped up
32 *H. 8. c.3.* in the ſame courſe, to have their Clergy, and indure the brand even as other men.

Two difficulties yet remain, which hindred the execution of the Laws againſt Treaſon. One concerning the place, the other the perſon.

The place many times of the plotting and beginning of the Treaſon befalleth to be without the walk of the King's Writ, in which Caſe by the Common Law it cannot be inquired or tried, or it may be, that the men of the place be generally diſaffected, and then no hope of finding out the matter. In ſuch
28 *H.8.c.15.* Caſes therefore it is provided, that be the Crime whereſoever
33 *H 8. c. 22.* the Delinquent will, it ſhall nevertheleſs be inquired, and tried where the King will.

The Perſon of the Delinquent alſo many times changed its condition; it might be ſober at the time of the Delinquency, and afterwards upon diſcovery, prove lunatick, and thereby
35 *H.8. c.2.* avoid the Trial, this whether in jeſt or earneſt, by a Statute is made all one, and it is ordained, that in Caſe the fact be confeſſed by the Delinquent before the Lords of the Council, at ſuch time as the party accuſed was of ſound mind, and the ſame be atteſted under the hands of four of thoſe Lords, the ſame ſhall be a good ground to proceed to inquiſition before Commiſſioners, and the ſame being found, to try the Delinquent without

without answer or appearance, saving unto Barons their Trial by their Peers. And thus however in their Fits, the Will of the Persons of these Kings was too hardy for the ~~Kings~~ Law to manage according to Rule, yet the Law still in Title kept the Saddle, held the Reins, and remaineth the chief Arbitrator unto every man.

CHAP. XXXIV.

Of the general Government of Edward *the Sixth*, *Queen* Mary, *and Queen* Elizabeth.

WE are at length come within sight of the shore, where finding the Currents various and swift, and the Waves rough, I shall first make my course through them severally, and then shall bring up the general account of the Reigns of one King and three Governours.

The King was a Youth of about ten years old, yet was older than he seemed by eleven years; for he had all the Ammunition of a wise King, and in one respect, beyond all his Predecessors, that made him King indeed, *By the grace of God.* He was the only Son of *Henry* the Eighth, yet that was not all his Title, he being the first President in the point of a young Son, and two elder Daughters by several venters; the eldest of whom was now thirty years old, able enough to settle the Government of a distracted Nation; and the Son so young, as by an Act of Parliament, he was disabled to settle any Government at all, till he should pass the fifteenth year of his Reign: But the thing was settled in the life-time of his Father, whose last Will, though it speak the choice, yet the Parliament made the

Election, and declared it. The condition of this King's Person,
28 *H.* 8. *c.* 5. was every way tender; born and sustained, by extraordinary
35 *H.* 7. *c.* 1. means; which could never make his days many, or Reign long: His spirit was soft and tractable, a dangerous temper in an ill air; but being fixed by a higher principle than nature yielded him, and the same, beautified with excellent endowments of Nature, and Arts, and Tongues, he out-went all the Kings in his time of the Christian World. His Predecessors provided Apparel and Victual to this Nation, but he Education, and thereby fitted it to overcome a fiery tryal, which soon followed his departure. The Model of this Goverment was as tender as himself, scarce induring to see his Funeral; ready for every change, subject to Tumults and Rebellions, an old trick that ever attends the beginning of Reformation, like the wind the Sun rising. The diversity of Interests in the Great Men, especially in point of Religion, for the most part first set these into motion; for some of them had been so long maintained by the Romish Law, that they could never endure the Gospel: and yet the different Interests in matters of State, made the greater noise. All was under a Protector fitly composed to the King's mind, but ill matched with rugged humourous, aspiring minds; whereof one that should have been the Protectors great Friend, became his fatal Enemy, and though he were his Brother, to prejudice his Interest, pawned his own blood: The other which was the Duke of *Northumberland*, had his will, but missed his end; for having removed the Protector out of the way, and gotten the chief power about the King, yet could he not hold long what he had gotten; for the King himself, after sixteen months decaying, went into another World, and left the Duke to stand or fall before some other power, which came to pass upon the entry of the next Successor.

The greatest trouble of his Government arose from the prosecution of a design of his Grand-father, *Henry* the Seventh, for the uniting of the two Crowns of *England* and *Scotland* by marriage, and settling an induring peace within this Isle; and

and unto this work all were aiders in both Nations, but the Enemies of both: But God's ways are not as Man's; it's a rare example to find out one Marriage that did ever thrive to this end. *England* meaned well in profering Love, but the wooing was ill-favouredly carried on by so much Blood.

Lastly, as the Government was now tender; so was it carried with much compliance with the people, which ever gives occasion to such of them that are irregular, to be more, and such as are well governed to be less, because though pleasing it be, yet it is with less awe and spirit, which renders their obedience at the best but careless and idle, unless such as are very conscienceous be the more careful over their own ways, by how much their Superiours are the less.

NOt thus was Queen *Mary*, but (like a Spaniard) she over-ruled all relations and ingagements by design; she was about forty years old, and yet unmarried when she came to the Throne, it may seem she wanted a mind to that course of Life from natural abstinency, or was loath to adventure her feature (which was not excellent) to the Censure of any Prince of as high degree as she held her self to be; or her value was not known, so as to persons of meaner Interests she might seem too much above, and to those of greater too much beneath: Or possibly her Father was loath to let the World know her Title to the Crown till needs must, or to raise up a Title for another man so long as he had hope of a Son of his own to succeed him, and yet had formerly designed her for a Wife to *Charles* the Fifth, and afterwards to the Dauphine of *France*: Or it may be her self had set a command of her self, not to change her Estate till she saw the course of the Crown, either to or fro; however, the time is now come that she must marry, or adventure her Woman-hood upon an uncertain and troublesome state of Affairs: She liked the Lord *Courtnee* above the Prince of *Spain*, but feared he would not design with her: She held him

Q. Mary.

Thuan. vol. 1. lib. 13.

Thuan. vol. 1. lib. 1.

Fox

him not unmeet for her degree, for she feared he was good enough for her Sister, that then also had the Title of a Kingdom waiting so nigh her person, as she was an object of hope to her Friends, and fear to her Enemies. And yet Queen *Mary* married the Prince of *Spain:* It may be it ran in the blood to marry into their own blood, or rather she was thereto led by reason of State, partly to enable her with greater security in the reseisure of her Kingdom, in the Popish Religion, wherein she knew she had to do with a people not easie to be reduced, where Conscience pretended reluctancy; and partly to assure her Dominion against the out-works of the French and Scottish designs. And so she yielded up the Supremacy of her Person to the Prince of *Spain*, but (thanks to the Nobility) the Supremacy of the Kingdom was reserved to her own use, for it was once in her purpose to have given up all to the man, rather than to miss of the man. And yet their condition was not much comfortable to either: the peoples dislike of the match sounded so loud abroad, that when the Prince was to come over, the Emperour his Father demanded fifty Pledges for his Sons safety, during his abode in this Land, which was also denied; when he was come over, the English fear the Spanish Tyranny, and the Spanish, the old Saxon entertainment of the Danes; so both lye at their close guards, as after some time the King and Queen did no less, for the Queen was either never earnest in her affection, or now much less, finding his Body diseased, and his Mind lingering after unlawful game. On the other side, the King not finding that content in her Person (especially after her supposed Conception) that he expected, looked to his own Interest apart from hers, and thereby taught her to do the like; and this she thought cost *England* the loss of *Callis*, and he *Spain* the loss of many advantages that might have been obtained, and was expected from this conjunction. Thus by the several interests between the King Regnant, and the Queen Regent, the Government of *England* became like a knot dissolving, neither fast nor loose.

Bodin. Rep. lib. 6.

Towards the people she might well be reserved, if not rigid; for

for she knew her entry was not very acceptable though accepted; and that her design was contrary to her engagements; and therefore it was vain to think to please her self, and pleasure them. Nor did she much busie her thoughts therewith, that abominated trick of Impost upon Merchandise she brought into fashion, which had by many publick Acts been damned for the space of two hundred years; this was done without either shame or fear; for if the people turned head, she knew she had a good reserve from *Spain*, and the people might very well consider of that, though for her part she desired not much to improve that Foraign Interest; because she might well see that *Spain* designed to keep *England* so far beneath, that *France* might not get above: And that *Philip* neither loved the double Crown of *England*, no, nor the triple Crown at *Rome*, otherwise than in order to that of *Spain*. *C. 2. Instit. fol. 61.*

This distance between her and her King, wrought her to a more nigh dependency upon her Council and English Nobility, and so became less discerned in her Government; although questioness she did much, and wanted not Wisdom or Courage to have done more, but that she was wholly not her own Woman: All men do agree that she was devout in her kind of profession, and therein as deeply ingaged as her Brother *Edward* had been in his; though it may be out of tenderness of Conscience, but she out of a Spanish kind of gravity, that indures not change: and whereunto she was well aided by her Clergy, who were her beloved for her Mothers sake, and now also so much the more sowr, by how much the nigher to the bottom: It's the less wonder therefore, if the Zeal of these times burnt into a flame, that at length consumed even those that kindled it. In one thing more above all the rest, she acted the part of her Sect, rather than her Place, and the same contrary to the advice of her Ghostly Fathers, and all Rules of Policy, and the agreement between her King and self upon Marriage; which was the ingagingof *England* in the War at Saint *Quintins*, against the French, contrary to the National League formerly made: Nevertheless, the issue was but suitable, for though the

English

Engliſh obtained their part of the Honour of that day, yet in the conſequence they loſt *Callis*, the laſt foot that the Engliſh had in *France*; henceforth *England* muſt be content with a bare Title: As this was deſerved, ſo was it alſo reſerved by the Queen, to make the World believe that ſhe died for grief therefore as a Mother of her Country; although her bodily diſeaſe, contracted by a Conception, wherein ſhe beguiled both her ſelf and the World, concurred thereto. In ſum, the worſt that can be ſaid of her, is this, That ſhe was ill principled; and the beſt, that ſhe acted according to her principles, and ſo lived an uncomfortable Life, ſhaped a bloody Reign, and had but a dim Concluſion.

The night was now ſpent, and Queen *Elizabeth* like the morning Star riſing into the Throne, ſent forth the benignant Influence of both her Predeceſſors, and many ways excelled them both, ſhe was begotten in a heat againſt *Rome*, wherein alſo ſhe was born and trained up by her Father and Brother *Edward*'s Order, and ſaw enough in her Siſters courſe to confirm her therein. For Queen *Mary* was not very Catholick in her Throne, though ſhe was in her Oratory. Nevertheleſs, Queen *Elizabeth*'s Courſe hereunto was very ſtrange, and might ſeem in outward reſpects to lead her quite wide, for her youth was under a continual yoke, her Mother dead whiles ſhe was at the breaſt; her Father owning her no further than as his Child born of a Rebellious Woman, never intending her for the Crown, ſo long as any hope was left of any other; with her age the yoke grew more heavy, her Brother *Edward* being but of the half-blood, except in point of Religion, might reſpect her at a diſtance beyond his Mothers Family, but this laſted not long, her Siſter *Mary* comes next, of a ſtranger blood to her than her Brother was; looking ever back upon her as one too nigh her heel, and more ready to tread upon her Train than ſupport it, the difference in Religion between them two added yet further Leven, and this occaſioned from her Siſter to her many ſowr reflections, bitter words, harſh uſage, concluding with Impriſonment, and not without danger of

of Death: All which Queen *Elizabeth* saw well, made the less noise in Religion, walked warily, and resolved with patience to indure the brunt; for she might perceive by her Father's Will that her way to the Crown, if ever she arrived at the end, must be through a Field of blood; and though she knew her change of Religion might make the way more plain, yet God kept her in a patient waiting, until the set time was come. Thus passing over her Minority with little experience of youthful pleasures, she had the happiness to have the less sense of youthful lusts, which meeting with natural Endowments of the larger size, rendred her the goodliest mirror of a Queen Regent that ever the Sun shone upon, God adding thereto both Honour and continuance, above all that ever sate in that Throne: Her entrance was with more joy to others than her self, for she kept her pace as treading amongst thorns, and was still somewhat reserved, even in matters of Religion, though she was known to be devout. She had observed that the hasty pace, both of her Brother and Sister brought early troubles before either of them were well setled in their Throne. And therefore whereas her Sister first set up the Mass, and then endeavoured to settle it by disputes, she contrarily first caused the point to be debated, and thereby gained liking to lay it aside. It's true, the moderatorship in that dispute was imposed upon a Lay man (as their term is) but his work being to hold the disputants to order in debate, and not to determine the point in Controversie (which thing was left to the Auditory) might therefore more rationally be done by him, than censured by any Historian, that shall undertake to judge them all.

The first step thus made, one made way for another till the whole became levened; her proceedings against Opposers were with much lenity, rather overlooking, than looking on; and such as stood more directly in her path, she would rather set aside than trample down: And be fair to all (without respect to difference of Religion) that would be fair to her. Much of her happiness depended upon Election of her Council, more in observing their advice, that whether *Forcat. de Gal. imp. lib. 7.*

ſhe did rule, or were ruled, or did rule by being ruled, might deſerve ſome conſideration: This ſhe did to give ſatisfaction to ſuch as took prejudice at her Sex, rather than out of any ſenſe of imbecillity in her own intellectuals, for therein ſhe equalled the beſt of her Predeceſſors, and in learned Endowments exceeded them all. Generally ſhe was of a publick mind, if not popular, ſhe loved to be ſeen of the people, and yet kept her diſtance: Her Sex taught her to uſe her tongue much, and her education to uſe it well and wiſely: That, with a reſerved carriage, was her Scepter, winning thereby applauſe from the inferiour ſort, and awe from the greater. A wiſe man that was an eye witneſs of many of her Actions, and of thoſe that ſucceeded her, many times hath ſaid, That a Courtier might make a better meal of one good look from her, than of a gift from ſome other King. Another felicity She had beyond others of her place, She loved not to be tied, but would be knit unto her people. To them ſhe committed her confidence under God, and they to her their chiefeſt Treaſure on Earth, *viz.* Their hearts to her Parliament, which was the moſt conſiderable party that She had to deal with, She could perſonate Majeſty equal to any Emperour, and adviſe, commend, yea, and chide if She ſaw occaſion: And yet ever had a trick to come off with a kind concluſion without blur of Honour. So as of thirteen Parliaments called during her Reign, not one became abortive by unkindneſs; and yet not any one of them paſſed without Subſidy granted by the people, but one wherein none was deſired: And ſometimes the aid was ſo liberal, that She refuſed the one half, and thanked the people for the remnant; a courteſie that rang loud abroad to the ſhame of other Princes. She would often mention her Prerogative, and yet not hold her ſelf wiſe enough, either to interrupt the Judges in their way, nor the Biſhops in theirs: Albeit, She ſpared not alſo, as She ſaw occaſion, to check the beſt of them for their irregularities; She had no Beloved, yet entertained Favourites at a cheaper rate, and in better order, than Kings uſe to do; for She had a preferment within her power beyond the reach of them all, and paſſion alſo ſoon at command, or rathe

Quint. lib 1. cap. ult.

Bodin. rep. l. 6.

rather ſometimes beyond command: Yet if calmly taken, it ever proved good for that party (that ſuffered) in the concluſion. However, her love She held under her own power, and therein excelled her Fore-fathers; She had the Precedent of her Siſter (that adventured upon a Prince for her Bed, and miſſed what She expected, and loſt what She had) and thereby learned to call into queſtion the poſſibilty for her to gain the private contentments of a married Life, and therewith maintain her publick Intereſt in the Kingdom; and therefore reſolved rather to ſit alone than to ſit below, and to refuſe the help of any Conſort, rather than to part with any one jot of her Intereſt in the people: So She remained above the people and her ſelf, and thereby enjoyed both. But Cuſtom in Government growing, together with infirmities of age, made her Regency taſte ſomewhat ſtale and ſpiritleſs, and gave occaſion to mens minds to wander after the next Succeſſor; before She had been nine years Queen, this ſcrutiny was once begun; but it received a fair anſwer of delay, becauſe it was then taken as done in love, now the apprehenſions hereof according to her age are more ſad; She thinks them weary of her, and thereupon She is weary of her ſelf and them: She ſuppoſes She can no longer give them content; the Lords have the power, they will not be ruled; and ſuch like dark thoughts working upon an aged body, weakned with other infirmities, waſted her ſpirits, and haſtned a concluſion unto a weary life, her ſelf not unwilling herewith, and her Courtiers leſs, who expecting more from Succeſſors than they find, lived to diſ-deſire and unwiſh their former choice by late repentance; thus making the ending of her days, the renewing of her Reign in the hearts of all that obſerved her alive, or conſider her (now dead) in the written Regiſters of her Fame.

CHAP. XXXV.

Of the Supreme Power during these Times.

THe Supreme Power, but ere while monstrous in the two former King's times for Greatness, now suffers as great a diminution, over-shadowed by infancy, womanhood, and Coverture; and gives the people breath to beware for the future, *Ne potentes si nocere velint non possent*; nevertheless the loss was only of the Hydropical humour, and the Government came forth more clearly like it self. In the point of Infancy, *Edward* the Sixth bears it forth, being the seventh President of Infancy, ruling under Protectorship, since the Norman times; yet beyond all the rest in managing his Supremacy in Church matters, which none of them all did ever engage upon before him.

English Prerogative and Supremacy are Notions of a sublime Nature, and commonly looked upon as the Holy Mount at the Delivery of the Law, at a great distance, for fear of death or undoing; and yet it is such a thing as a child may handle without hurt done, either to the Estates, Persons or Consciences of any Man; because it's presupposed he does nothing, but what the Law first dictates by his Council unto him. There is then no infancy in the Crown, though in the Person, because the wisdom of the Crown is not intended to rest in one Person, but in the Counsels of many, who are equally wise, whether the Person of the King be old or young. And the Satute made by *Henry* the Eighth, by which this King had power by his Letters-patents, after the age of 24 years, to adnul any Act of Parliament made by him before that time, was not grounded either upon Principles of Law, or general Reason of State, but upon some particular circumstances of the state of the Affairs, as then they stood; and therefore is this power limited only to such Heirs

28 *H.* 8. *c.* 17.

or

or Aſſignees of *Henry* the Eighth, to whom the Crown ſhall come by his appointment. Nor did it ever thrive to that deſired end, whereto it was intended: for upon the entry of *Edward* the Sixth, the Councils changed, and the Parliament took this Statute away, as ſcandalous to the Fundamental Government of the Nation, and in ſtead of the power of Adnulling, allowed of the power of Repealing; yet ſo as until ſuch time of Repeal, the ſaid Statutes and all Acts thereupon done, ſhall for ever be deemed warrantable and good. This was too much, but that the Times were yet in *Equilibrio*, and men were loath to part with their Intereſts, which they did hang upon that Power of Reſerve, unto the King's Letters-patents: yet in that the Power is limited, not only in regard of the manner and time, but of the perſons, and alſo of the Statutes that are to be repealed: it is ſufficient to vindicate the nature of this Prerogative (if ſuch it were) to be no ways inherent, but acquired by Conceſſion. But as touching the Legiſlative Power, they would not truſt it in the leaſt manner to any other King. The Parliament had crowned Proclamations at the inſtance of *Henry* the Eighth, with that Royal Title of Laws, in manner as formerly hath been noted. Now all Intereſts, both of the Popiſh, and of the Reformed parties of this Nation, are againſt it; the former becauſe they ſaw the King's preſent way to be againſt them, and both it and the later becauſe the thing it ſelf was abominable unto the Liberties of the people, and therefore it is ſoon taken away by Repeal, and the Legiſlative Power is wholly re-aſſumed to themſelves, as formerly: For though in matters Eccleſiaſtical, the Power of the Crown might ſeem to be more pre-eminent in regard of the Supremacy, and ſome particular Powers in making Bishops by Election without *Conge deſlire*, yet did the Parliament neither yield, or acknowledge any Legiſlative Power to be in the Crown thereby, but proceeded on in that way of the thirty and two Commiſſioners formerly agreed upon by them, in the time of the King's Father. Thus the King, though an Infant, was a Gainer, and the Crown nevertheleſs ſtill the ſame.

1 E. 6. c. 12.

31 H. 8. c. 8.

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1 E. 6. c. 12.

1 E. 6. c. 22.

3 & 4 E. 6. c. 11.

Secondly,

Secondly, that Crown that may be worn by an Infant, may much rather be worn by a Woman, whose natural Indowments do far exceed the other, and are not inferiour unto the most of men: Of this we have two Examples in these times, Queen *Mary* and Queen *Elizabeth*, of several professions in matters of Religion, and liable to exceptions, in regard of their Sex, by men of the counter-profession on both sides; yet both upheld the Honour of the Crown, though therein the one more especially, being neither ingaged in the Roman Cause, nor in the Estate of Marriage, as the other was. This was Queen *Elizabeth*, in person a Woman, but in mind indowed with all the perfections of a man; she could not indure to abate one hairs breadth of her State; and yet upon the sole regard of her Sex, she submitted her Title of Supremacy, to a more moderate name of Supreme Governour, whereas her Father would be called Supreme Head, as if it were not only hazardous, but hideous for a Woman to be Supreme Head of the Church; and for this
26 *H.* 8. *c.* 1. cause would she not revive that Statute made by her Father, and continued by her Brother *Edward* the Sixth, and repealed by
1 *Eliz c.* 1. her Sister Queen *Mary*: Nevertheless such as she was, she had all such Jurisdictions, Priviledges, Superiorities, and Pre-eminencies, Spiritual or Ecclesiastical, as by any Ecclesiastical Power or Authority formerly had been, or might be lawfully exercised, for Visitation of the Ecclesiastical State and Persons, and for Reformation, Order and Correction of the same, and all manner of Errors, Heresies, Schisms, Abuses, Offences, Contempts and Enormities; she had therefore neither absolute Empire, nor absolute Jurisdiction over the Churches; neither Power to make, declare, alter, or repeal any Law; neither did she ever exercise any such power, but only by Act of Parliament:
1 *Eliz. c* 3 She had a Power over Ceremonies in the Worship of God, which was given her by the Parliament to execute by advice, and therefore was limited, as also was all the remainder of her Power in Jurisdiction Ecclesiastical; for she could do nothing in her own Person, but by Commission: and these Commissioners must be Natives and Denizons, not Foraigners; and the same to be but in certain Cases, and with certain Process. Some Cases

Cases of Ecclesiastical Cognisance were referred to Trial at the Common Law, *viz.* Such as concerned the publick Worship of God in Cases of Forfeiture and Imprisonment. 13 *Eliz. c.* 12. 23 *Eliz. c.* 1.

Lastly, neither had the Queen, nor her Commissiones, nor Bishops, absolute Power over the Church-Censures; no Censure was regarded but Excommunication, and that no further than in order to the Writ, *De Excommunicato capiendo*, and in all Cases the same was to be regulated according to the Statute in that Case provided, or by the Common Law in Case of Action: In all which we find no Jurisdiction in Cases Ecclesiastical, that is absolutely settled in the Crown: In matters Temporal the thing is yet more clear; she never altered, continued, repealed, nor explained any Law, otherwise than by Act of Parliament, whereof there are multitudes of Examples in the Statutes of her Reign; and what she did by her Judges was ever under Correction. A Woman she was, and therefore could be no Judge, much less in the Cases of Difference concerning her self and her Crown. A Queen she was, and might make Judges, but she must go according to the Law; new Judicatories she could make none; nor judicially make, declare, alter, or determine the Power of any Court or Judge in Case of Difficulty, but by her Parliament; as in the Cases concerning the Power of the Lord Keeper, the Powers of the Commissioners of *Sewers* and charitable uses, the Courts at *Westminster*, and the County Courts, in the several Statutes concerning the same, may more fully appear. And which is yet of a meaner size, her Power extended not to redress any inconvenience in process of Error, or Delay, in Courts of Law, nor to remedy Errors in Judgements, Fines, Recoveries, Attainders, or other matters of Record or Trial, whereof the Statutes of her time are full, and also the opinions and Judgements of the Judges of the Common Law concurring therewith: I mention not the power of life and member, which without all contradiction hath ever been under the protection of the known Law; so as upon the whole Account it will be evident, that this Queen had no absolute Pre-eminence in all Cases, but either in contradiction

5 *Eliz. c.* 23.

18 *Eliz. c.* 8.

5 *Eliz. c* 18. 13 *Eliz. c* 9. 39 *Eliz. c.* 6. 18 *Eliz. c* 12. 43 *Eliz. c* 4.

to Foraign Power, or the power of any particular person, and not in opposition to the joynt interest of the Representative of *England.*

Queen *Mary* comes next, although a Woman as well as she, yea, her elder Sister and Predecessor, yet came short of her in the point of Supremacy, by a double submission, both unto the Law of a Husband, and of a Foreign Power in Cases Ecclesiastical; although the same was with such qualifications, as it was much more in Title and pretence than in reality; and so in the conclusion, neither approved her self to be good Wife, good Catholick, nor good Queen. She could be no good Wife, because she was too great for her Husband within the Realm, and resolved not to be without. A Catholick she was, but the worst that ever held her place: her Father appeared what he was, spake plain English, and was easily discerned. But she told the Pope a fair Tale of disclaiming Supremacy, and reconciling her Kingdom; yet none of her Predecessors did go beyond her in irregularity of her proceedings. Before ever she called Parliament, she settled the great Work of Reformation, or rather Deformation in the Worship of God, by single Proclamation, and not only took away the partition-wall of Doctrine by the like power, but gave way and power to persecution thereupon, to arise before any Power or Order from the Holy See, then so called, inabled her thereunto. And after that she declared her self convinced, that she ought not to exercise Ecclesiastical Jurisdiction, and by her Instructions forbad the Bishops to use in their Process, that Clause of *Regia Autoritate fulcitus*, yet even these Instructions had no other Authority than her own; and nevertheless, she still inforced the Execution of all matters concerning the publick Worship of God, and Government of the Church, when as yet the Pope had no admittance unto his ancient claim. It is very true, that the Pope long ere now had made a fair offer, and the Queen had lent her ear, but her Train was too great to move as fast as was pretended, so as no meeting could be had till the Queens Marriage with *Spain* was past, and such as were disaffected, found

found it was bootleſs to ſtop the Current of two ſuch mighty ſtreams of Power, now joyned into one; and ſo that unclean ſpirit returned ſeven times worſe than when he went out, and took *Seiſin*, meerly upon Repeal of the Laws made by *Henry* the Eighth, in the Negative, without farther Grant or Livery: For though an expreſs Embaſſage was ſent to *Rome*, to perform the ſolemnity of the ſubmiſſion, yet the Pope died before the arrival of the Embaſſie, and the ſolemnity failing, left the Title of the Crown much blemiſhed, yet was it not wholly defaced; for if the Statutes in *Henry* the Eighth, and *Edward* the Sixth's time, did but confirm the poſſeſſion, it's evident that the repealing of thoſe Statutes took away no Right from the Crown, nor gave legal poſſeſſion to the Pope, that had formerly neither poſſeſſion nor right, but left him to his Remitter, as in his ancient right, or rather in his ancient wrong. Yet right or wrong, *de facto*, he both did win and wear the Keys ſo long as the Queen lived, and ſo far as ſhe pleaſed; for her devotion would not allow of abſolute obedience in that kind, nor all for Goſpel, that the Pope ſaid or did; but by her ſelf and Council, executed the powers of Supremacy of Juriſdiction in Church matters, not only in purſuance of the Papal Authority, but in croſſing the ſame where the Popes way croſſed her opinion, as in the Caſes of the War between her Husband and *France*, and the Power Legatine of Cardinal *Pool*, her condemning of Doctrines and Books to be Heretical by Proclamation, eſtabliſhing both Prayers and Dirges, and other Orders of publick Worſhip, whereof more fully in the publick Hiſtories of thoſe times, and the Queens Injunctions upon occaſion of the Death of Pope *Julio*, is to be ſeen.

Laſtly, ſhe was no good Queen, not only becauſe ſhe gave up the peoples Liberties in Eccleſiaſtical matters to the Foraign Juriſdiction of *Rome*, but undertook too much therein by far upon her own account, and in Civil Affairs, though *De jure*, She was not inferiour to any of her Progenitors, yet She would have it declared by the Parliament, as if the conſideration of her Sex or Birth, had made ſome heſitation in her mind, and when ſhe had made all clear, ſhe commending her ſelf thereby

2 *Marl. Parliament* 2. *c.* 1.

to the Prince of *Spain*, with her ſelf, indangered likewiſe that truſt of the Nation, which ſhe had received, and caſt ſuch a ſhadow upon her own Supremacy, as in many things it is hard to be diſcerned.

Laſtly, in her whole courſe uneven, ſometimes appearing like the Eldeſt Daughter of *Henry* the Eighth, at other times like a Fem-covert, led by the will of her Lord and Husband, that wanting Supremacy himſelf, rendered her thereby beneath her ſelf.

For firſt, she married by Act of Parliament, as if she were not at her own diſpoſing, profeſſing as much in her ſpeech to the Londoners, upon the Kentiſh Rebellion; ſo a difference was made between the two Siſters, the Marriage of the one being by advice of Parliament, and the abſtinence of the other againſt the ſame. Nor is the ſame altogether irrational, for by the one the Government of the Nation is indangered, and by the other otherwiſe.

Secondly, by her Marriage she became doubly married, one way relating to her Perſon unto her King; the other relating to her truſt unto her Council: For where a Foraign mighty King is ſo nigh the Helm, it's dangerous to truſt the ſame to his Wife without the joynt concurrence of the Lords. The matter in fact declared no leſs, for many times she had ſteered quite wide, had not the Lords been more ſtiff to their principles than she.

The firſt year of her Marriage was Honey-moon with her, she thought nothing too dear for the King, and that her ſelf was but meanly married, unleſs her Husband were as complete a King in her Nation, as any of her Predeceſſors, although contrarily the higher he was advanced, the meaner ſhe became.

Thirdly, by her Marriage she adventured her Title of Supremacy of Juriſdiction: For *Philip* as King had the Honour, Stile and Kingly name, and ſo had the precedency; he had to do alſo with the Juriſdiction, for by the Articles of the Marriage, he was to aid the Queen in her Adminiſtration of the Kingdom, and maintenance of the Laws, Writs and Commiſſions

Commiſſions, paſſed under his name: He alſo ſate in Parliament, voted therein, and joyned in the Royal Aſſent.

Laſtly, joyned in the publication, and execution of all Laws. To him alſo was Allegiance due, and therefore the Crime of Treaſon was equally againſt his, as the Queens Crown and Dignity, ſaving that it was reſerved to be as againſt him only during the time of Coverture, and yet had the Queen left iſſue by him, it would have been a hard adventure for the Lawyers to have given their opinion in that caſe, ſeeing the King had been Guardian to his Children during their minority. 1 & 2 *Phil. & Mary, cap.* 10.

Laſtly, the whole power and juriſdiction reſting in them both joyntly, could not inable them to make or diſſolve Courts at will, nor conclude orders and directions in caſes of Plea and Conveyance, nor Proceſs concerning the ſame. I ſhall ſum up all in this one concluſion, if neither of theſe three had an abſolute Legiſlative Power, either in matters concerning the Church or Common Wealth, if no abſolute juriſdiction in caſe, either of Life, Member or Eſtate: If they neither can create, unite or alter any Court, either concerning the Trial, and determining the Eſtates of the People, or their own Revenue. If not alter, or make any new Proceſs in the Courts of Law: If not order common aſſurances of Lands or Eſtates, 1 *Mar. Seſſ.* 2. *cap.* 11. & *c.* 5. & 7. & *c.* 12.

And laſtly, if they have no power in determining the laſt appeal and definitive ſentence in matters of controverſie, but all muſt reſt upon the ſentence by Parliament, there muſt certainly be found out a further ſenſe of that grand Title of Supremacy of Juriſdiction, Power, Superiority, Pre-eminence and Authority, than by the common vogue hath been made. The Title of Supremacy, was firſt formed in the behalf of *Henry* the Eighth's Claim in matters Eccleſiaſtical, which by the Statute, is explained under theſe words of power, To viſit, correct, repreſs, redreſs, Offences and Enormities: This Power and no other did Queen *Elizabeth* claim, witneſs the words of the Statute in her own time. But in the framing of the Oath of Supremacy in her time, not only in cauſes Eccleſiaſtical, but Temporal (which never came within the Statutes and publick Acts in *Henry* the ~~Seventh's~~ Eighth's time) are inſerted; and if any thing more was 26 *H.* 8. *c.* 1. 5 *Eliz. c.* 1.

intended it must come under the word *Things*, which also was inserted in the said Oath, and yet if the words of the Statute of Queen *Elizabeth* formerly mentioned be credited, the word *Things* ought to comprehend no more than the word *Causes*, and then the Power of Queen *Elizabeth* in the Common-Wealth will be comprehended in these words of Supremacy, to visit, correct, repress, redress, Offences and Enormities, for the Supremacy in the Church and Common-Wealth, is the same in Measure, and what more than this, I cannot understand out of any publick Act of this Nation. Now in regard Offences and Enormities are properly against Laws, the power to visit and correct must also be regulated according to Laws, either of War or Peace, nor do these five words, Jurisdiction, Power, Superiority, Pre-eminence and Authority, contain any more Supremacy, or other sense; for two of them speak only the Rank or Degree of the Queen in Government, *viz.* Superiority and Pre-eminence belongeth only to her, and not to any other Foreign power: And two other words do note her Right and Title thereto, by Power and Authority committed to her: And the other word denotates the thing wherein she hath Superiority and Power, *viz.* In Jurisdiction: the nature of which word *Ulpian* (speaking of the nature of a mixt Government) explaineth thus; *Quando servata dictione juris judiciorum fit animadversio*, so as this Supreme Authority in jurisdiction is no other than Supreme Power to visit, correct, redress, Offences, or determine matters in doubt by deputing fit persons to that end and purpose according to the Law, and this is all the Supremacy that appeareth to me belonging to the Crown in these times.

CHAP.

CHAP. XXXVI.

Of the Power of the Parliament during these times.

WHen the Throne is full of a King, and he is as full of opinion of his own sufficiency and power, a Parliament is looked upon as an old fashion out of fashion, and serve for little other, than for present shift, when Kings have run themselves over Head and Ears. A condition that those of that high degree are extremely subject unto, but where the Crown is too heavy for the wearer, by reason of infirmity, the Parliament is looked upon as the chief Supporters in the maintaining both the Honour and Power of that Authority, that otherwise would fall under contempt: A work that must be done with curious touch, or a clear hand; or they must look for the like Censure to that of a King to a great Lord that crowned him. My Lord, I like your work very well, but you have left the print of your fingers upon my Crown: Such was the condition of these times, wherein a Child and two Women are the chief, but ever under the correction and direction of the Common Council, in matters of common concernment. Two things declare the point, the course of the Title of the Crown, and the order of the powers thereof.

The Title ever had a Law, which was at the Helm, although diversly expounded. Kings ever loved the rule of Inheritance, and therefore usually strained their Pedegree hard to make both ends meet, though in truth they were guilty oftentimes to themselves, that they were not within the degreees: *Bodin. rep. l. 6.* The people ever loved the Title of Election, and though ever they joyned it to the Royal blood, and many times to the right Heir, to make the same pass more currant without interruption of the first love between them and their Princes; yet more often had they Kings that could not boast much of their birthright, in their first entry into their Throne: Of three and twenty

twenty Kings from the Saxons time, four of the former had no Title by inheritance; the two *Williams*, *Henry* the First and King *Steven*; of two others, *viz.* *Henry* the Second, and *Richard* the first had right of Birth, yet came in by compact. The Seventh which was King *John*, had no Title but Election. The Eighth, *viz.* *Henry* the Third came in a Child, and contrary to compact between the Nobility and the French *Lewis*; the Ninth and Tenth succeeded, as by unquestionable Title of descent, yet the Nobles were pre ingaged: The eleventh, which was *Edward* the Third, in his Entry eldest Son but not Heir, for his Father was alive, but his Successor was his Heir: it's true, there were other Children of *Edward* the Third alive, that were more worthy of the Crown, but they were too many to agree in any but a Child, that might be ruled by themselves. Three next of the ensuing Kings were of a collateral line. There two Successors, *viz.* *Edward* the Fourth, and *Edward* the Fifth were of the line, yet *Edward* the Fourth came in by disseisin, and *Edward* the Fifth by permission; *Richard* the Third, and *Henry* the Seventh were collateral to one another, and to the right blood, *Henry* the Eighth, though when he was King might claim from his Mother, yet came in as Heir to his Father. And if *Edward* the Sixth was right Heir to the House of *York* by his Grand-Mother, yet cannot the Crown be said to descend upon the two Sisters, neither as Heirs to him, nor *Henry* the Eighth, nor to one another, so long as the Statute of their illegitimation remained, which as touching Queen *Mary*, was till three Months after her Entry upon the Throne, and as touching Queen *Elizabeth* for ever; for that *Virago* provided for her self, not by way of repeal (as her Sister had done) but more tenderly regarding the Honour of her Father and the Parliament, than to mention their blemishes in Government, by doing and undoing: She over-looked that Act of *Henry* the Eighth, and the Notion of Inheritance, and contented her self with her Title by the Statute made by her Father in his thirty Fifth year, which to her was a meer purchase, and was not ashamed to declare to all the World, that she did have and hold thereby, and

28 *H* 8. *c.* 7.
1 *Mar. Sess* 2. *cap.* 1.
35 *H.* 8. *cap.*

and that it was high Treason for any Subject to deny, that the course of the Crown of *England* is to be ordered by Act of Parliament. And this power did the Parliament exercise, not only in ordering the course of the Crown to Queen *Mary* and Queen *Elizabeth*, but during the Reign of Queen *Elizabeth*, so far as to disinherit, and disable any person who should pretend Right to the Crown, in opposition to the Right of Queen *Elizabeth*; and upon this point only did the whole proceedings against *Mary* Queen of *Scots* depend, who clamed to be, and doubtless was Heir unto *Henry* the Eighth, after the determination of his Right Line, and yet she was put to death for pretending Right by the Common Law, in opposition to the Act of Parliament. True it is, that this Doctrine doth not down well with those that do pretend to Prerogative, aided (as they say) by the Act of Recognition, made to King *James*, and the Oaths of Supremacy and Allegiance, which do make much parly concerning Inheritance and Heirs: Nevertheless it is as true, that the Act of Recognition made no Law for the future, nor doth the same cross the Statute of 13 *Eliz.* nor doth it take away the power of the Parliament from over-ruling the course of the Common Law for after Ages. Nor do the Oaths of Supremacy and Allegiance hold forth any such Obligation unto Heirs, otherwise than as supposing them to be Successors, and in that relation only. And therefore was no such Allegiance due to *Edward* the Sixth, Queen *Mary*, or Queen *Elizabeth*, until they were actually possessed of the Crown, as may appear by the Oath formed by the Statute of *Henry* the Eighth, touching their Succession. Nor did the Law suppose any Treason could be acted against the Heirs of *Edward* the Sixth, Queen *Mary*, or Queen *Elizabeth*, until those Heirs were actually possessed of the Crown, and so were Kings and Queens, as by express words in the several Statutes do appear. Nor did the Recognition by the Parliament made to Queen *Elizabeth*, declare any ingagement of the people to assist and defend her, and the Heirs of her Body otherwise than with this Limitation, *Being Kings and Queens of this Realm*, as by the Statute in that behalf made doth appear.

13 *Eliz. c.* 1.

Thuan. tom. 1. *lib.* 20.

1 *Jac. cap.* 1.

35 H. 8. *cap.* 1.

1 *Eliz. 6. c.* 12.

5 & 6. *E.* 6. *cap.* 11.

1 & 2 *Phil.* & *Mar. cap.* 10.

1 *Eliz. cap.* 6.

1 *Eliz. c.* 3.

And

And laſtly, (had thoſe Oaths been otherwiſe underſtood) the Crown had by the virtue of them been pre-ingaged, ſo as it could never have deſcended to Queen *Mary*, Queen *Elizabeth*, or King *James*, but muſt have remained to the Heirs of *Edward* the Sixth for ever.

Secondly, the ſame power that the Parliament exerciſed in ordering the courſe of Succeſſion in the Crown, they exerciſed likewiſe in determining and diſtributing the Powers and Priviledges belonging to the ſame: For theſe Times were full of Novelties. The Crown had formerly fitted a Childs head more than once, but is never tried to fit a Womans head ſince the Saxons Times till now, that it muſt make trial of two. *France* might afford us a trick of the Salique Law, if it might find acceptance. And the unſettled ſtate of the people, eſpecially in matter of Religon, might require the wiſeſt man living to ſit at the Helm, and yet himſelf not ſufficient to ſteer a right courſe to the Harbour. Nevertheleſs, the Parliament having the Statute of *Henry* the Eighth to lead the way, choſe rather to purſue a Rule than to make one, and ſoon determined the point, *viz.* That the Crown of *England* with all the Priviledges thereof equally belong to a Woman in poſſeſſion, as to a Man or Child. A bold Adventure I ſay it was; but that *Henry* the Eighth was a bold Leader, and yet the bolder it was, if the conſequence be conſidered: For Queen *Mary* as a Woman, brought in one new Precedent, but in her Marriage a worſe, for ſhe aimed not only at a Foraign blood, but at a Prince in Power and Majeſty exceeding her own, and thereby ſeeking advancement, both to her ſelf and her Realm, indangered both. The matter was long in debate between the Spaniſh and Engliſh, and now had buſied their wits about ten years, at length a Supremacy is formed ſuitable to the Lord and Husband of Queen *Mary*, that could not be content to be one inch lower than her ſelf. *Philip* had the name of a King, and precedency, and in many caſes not without the Allegiance of the Engliſh. Their offences againſt his perſon equally Treaſon with thoſe againſt

1 *Mar. Parl. cap.* 1.

Sleiden.

1 *Ph. & Mar. Parl.* 2 *c.* 10.

and in many Cases not without the Allegiance of the English. Their offences against his person equally Treason with those against the Queens own persons; and indictments run, *Contra pacem, & coronam D. Regis & Reginæ.* That in some Cases he participated in the Regal Power may appear, in that by the Articles, he was to aid the Queen in the Administration of the Kingdom; he joyned with the Queen in the Royal Assent, and in Commission, Letters-patents, and in Writs of Summons of Parliament, as well as others; yet in the words the Crown is reserved only to the Queen, and she must Reign as sole Queen. Now if the King had broken this Agreement, either the Parliament must over-rule the whole, or all that is done must be undone, and *England* must bear the burthen. A Queen Regent is doubtless a dangerous condition for *England*, above that of an Infant King, unless she be married only to her people.

1 *Ph. & Mar. Parl.* 2. *c.* 10.

2 *Ph. & Mar. Parl.* 2. *c.* 1.

This was observed by Queen *Elizabeth*, who therefore kept her self unmarried: nor did the people otherwise desire her Marriage, than in relation to Posterity. Few of them liking any one of their own Nation so well, as to prefer him so highly above themselves, and fewer any Foraigner. This was soon espyed by Foraign Princes; and the Queen her self perceiving that she was like to receive prejudice hereby in her interest amongst them, signified by her Embassadours, that she never meaned to stoop so low as to match with any of her Subjects, but intended to make her choice of some Foraign Prince, who neither by power or riches should be able to prejudice the interest of any of her Neighbouring Princes. A pretty Complement this was to gain expectation from those abroad, and better correspondency thereunto. Upon this ground divers Princes conceived hopes of more interest than by trial they could find. And the Archduke of *Austria* began a Treaty, which seemingly was entertained by her, but her Proposals were such as silenced all those of the *Austrian* Interest for ever after, *viz.*

Bodin de Rep. lib. 6.

1. *That the Romish Religion should never be admitted into* England.

2. *That no man that she married, should ever wear the Title of King.*

3. *That no Foraigner should ever intermeddle in the Rule and Government of the Church or Common-wealth, nor in the Ministry of the Church.*

4. *That if he survived the Queen he should never challenge any Title or Interest in the Government, or any Possession in* England.

5. *She would never marry any one that she might not first see.*

So as either she aimed at some inferiour Prince, that durst not look so high, or else she did but make semblance till she was nigh forty years old: and in all declared that she liked not her Sister *Maries* choice.

To these two Powers of Determining and Distributing, I shall add a third of Deputing, which the Parliament exercised as formerly it had done. *Henry* the Eighth had in Ecclesiastical matters exercised a Power beyond the Law, and yet by Parliament had provided positive Laws by which the same ought to have been ordered; these were also confirmed in *Edward* the Sixth's time, with some Additionals. By these, particular Commissioners were appointed for the making of Ecclesiastical Constitutions; and the King himself had a power of Episcofactory, without *Conge delire*. They likewise limited the power of Ecclesiastical Courts, altered their Process, reformed their Censures, even that grand Censure of Excommunication it self. The like, or much more may be said of their deputing power in Civil Affairs, as well by inlarging the King's power, as in abridging the same: for whereas some of the Successors of *Henry* the Eighth, had power by virtue of his Letters-patents, after twenty four years of age, to annul any Act of Parliament by them made before that age. In the time of *Edward* the Sixth, notwithstanding the *Proviso* of that Law, and although *Edward* the Sixth was not then twelve years old, yet the Parliament repealed all, and restored to *Edward* the Sixth only that power for the time to come, but not to any of his Successors; and whereas *Henry* the Eighth had gained to himself and his Successors a Legislative Power by Proclamation; the Parliament

3 & 4 *E. 6. cap.* 11.
1 *Eliz. c.* 1. & 1. 1 *Edw. 6. c.* 1.
1 *Edw. 6. c.* 2.
5 & 6 *E. 6. c.* 1.
5 *Eliz. c.* 20.
1 *Edw. 6. c.* 11

in

in *Edward* the Sixth's time took the same quite away, and reduced Proclamations into their former sober posture. The like may be observed of the Power of the Parliament, in ordering the Lives, Members and Estates of the People in matters criminal; and in making and altering Courts of Justice, and bounding their Power, altering their Process, abridging their Terms for Judicature, reforming Errors in pleading, amending common Conveyances and Assurance, as in palling Fines with Proclamations; their course in County Palatine; Limitations of Prescription; fraudulent Deeds; Recoveries by Collusion, *&c.* in all which the Crown had no power, but in and by the Parliament. Many particulars more might be added, if the matter so required; for the Statutes are more full in these later Times than formerly, and may soon lead us beyond a just period in so clear a matter.

1 *Edw. 6. c. 11.*

7 *Edw. 6. c. 2.*
1 *Mar. Sess. 2. c. 10. & 12.*
1 *Edw. 6. c. 7*
1 *Edw. 6. c. 10.*
3. *c. 28.*
5 *& 6. c. 26.*

CHAP. XXXVII.

Of Jurisdiction Ecclesiastical in these last Times.

IN the general, and in relation to the Foraign Jurisdiction of *Rome*, it was like a Child in an Ague, under Fits of Heat and Cold; but in it self under the Prelacy, still growing in Stature, though not in strength. *Edward* the Sixth came in like a storm that tore up Episcopacy by the Roots, yet a Top-Root remained intire with the stock, bearing shew of a kind of Divinity, that though bared of the old Soil of the Papacy, yet transplanted into the new Mould of Royalty, soon conveyed a new life, which made the stock still flourish, and grow into a better condition than formerly it had. Their Legislative Power in matters concerning their own interest, though in outward view seeming their own, yet was doubly disturbed from the Pope and the King, who, though many times opposed one another, yet evermore were both of them in opposition to the Church, and with the greater bitterness by their

own mutual Emulations. But now the Church is come under the controul of only one that joyned with it for their mutual intereſt, as being both of them imbarqued in one and the ſame Ship.

Two things concurred to the furtherance hereof.

Firſt, the Times were tender, and ſcarce able to digeſt the change of Worſhip (now patronized by *Edward* the Sixth) much leſs able to digeſt the change of Government, if the ſame had been undertaken in a different way from what it was formerly.

Secondly, the Times were alſo dark, and few ſaw the bottom of Prelacy, but lodged all the prejudice in the perſons that managed that calling; and certainly they had the leſs occaſion to doubt of their own judgement therein; becauſe *Edward* the Sixth had the good providence of God to lead him to make uſe of ſuch men in that place, that were meek, and holy, and themſelves attempted in the fire of Perſecution, and therefore more tenderly affected to others in that condition; and theſe carrying themſelves like tender nurſing Fathers in their places, wrought in the people a good opinion of their places, and that Form of Government for their ſakes; yet even in thoſe firſt Times of Reformation, ſomewhat appeared in that very quinteſſence of Epiſcopacy, in matters about Ceremony and Conformity, that might have taught wiſe men to beware. Upon ſuch grounds as theſe it went well with Epiſcopacy in theſe firſt Times of Reformation, but ill with the Church in the iſſue. That Prelacy was a Gainer by the change in *Henry* the Eighth's time, hath already appeared; and that it ſtill gained, may further appear, in theſe enſuing Conſiderations.

Firſt, whereas formerly Biſhops were regardent both to the Crown and Presbytery (for ſo may the Dean and Chapter be accounted) in the point of Election by *Conge deſlire*; now they are made the birth of the King's own breath, which thing was never deduced from the ancient Right of the Crown (ſaving due honour to the air of the Preface of the Statute) for in the beſt Times it never had more than a power of inveſture;

1 E. 6. c. 2.

veſture: but from the neceſſity of the times ſo corrupted, that Deans and Chapters generally were of the Roman Spirit, and gave little hope of good Elections by themſelves, beſides the ſtate of Learning and Holineſs was now at the low water mark, ſo as little ſupply being looked for to begin the work of Reformation from beneath, they began above, and ſo it proved but a weak building for the longer time. And thus a leſſon is left to future Parliaments, that in Caſes of Reformation they are not to be ſtrictly holden to Rules of Law or Precedent.

Secondly, the Prelates hereby had their Authority confirmed by Act of Parliament, and ſo were now built upon a foundation that formerly did hang only upon a pin of power from *Rome*: For Juriſdiction without Authority is but a dropſie that brings inevitable conſumption in the concluſion. And thus the Prelacy are inabled to hold Courts without contradiction, and directed in their Proceſs, who formerly had no good Title to either, in that courſe that they held the ſame.

Thirdly, though their Juriſdiction was defined by the Statutes, yet in larger bounds than ever the Statute Laws formerly noted; and in what they claimed power, they did it not altogether upon Civil Right, but ſtill kept an awful regard to their Perſons and Power, as under the ſway of a Divine Donation, and therefore as in thoſe matters to them by the ~~the~~ Statute allowed, they did proceed in the Name and under the Seal of the King, ſo in other things of Collation, Inſtitution, Induction, Orders, Excommunication, and ſuch like, they proceeded in and under their own Name and Seal; and which was a Crown to all the reſt, power is ſtill given to the Archbiſhop of *Canterbury*, in caſes of faculty and diſpenſation, to proceed under his own Seal, and not the Kings, as if it were a power independent upon the Crown, and belonging unto the man, neither by Statute, nor Commiſſion, but coming by ſome ſecret Influence from the very place it ſelf; although in the clear ſenſe it is no more than a power of *Non obſtante*, in the point of obedience to the Canon

Canon Law, which by a Statute in *Henry* the Eighth's time, is declared no Law: But let this pass as a Mole in this fair face of Church Government. The Prelates are now become of the Vicinage, *Probi & legales homines*, they have their jurisdiction by Law established, what they lose in breadth, they gain in height and goodness of their foundation: Yet their Attire looks ill favouredly in Queen *Maries* eye, she will have it of the old cut again, and though Cardinal *Poole* was well seen in the Roman fashion, yet when he had done all, he did no more than shape a garment to serve the present Interlude, neither fit to the body, nor easie to be worn, and therefore after four or five turns upon the Stage it is thrown away. Nevertheless, during the time that *England* was thus dancing the *Italian* measure, Prelacy in *England* held its own Domestick garb so well, that neither *Poole* (being of English blood, not much distant from the Crown, and then also holding the Chair Legatine, as little inferiour to the Throne) would not impose too much, nor Queen *Mary*, a Woman of a stout Spirit, yield farther than she liked: By means whereof, the Prelacy looking no more to *Rome* than the power in Appeals; and therein little more than the bare Title, played *Rex* all the while with the people, under colour of Heresie and the Canon Law: Which now was again made their Rule: and thus as touching their Election and Jurisdiction, they were as before. For Queen *Mary* did nothing but by single Repeal. But Queen *Elizabeth* being true English, both by Father and Mother, liking not this retreat, faced about, routed the Roman fashion out of fashion; put Prelacy to its close guard, and received it upon capitulation, not only to mercy but favour, and so became her Vicar to exercise her Ecclesiastical Jurisdiction, *Per saltum:* For it is hard to find by what steps they gained this pitch: *Henry* the Eighth was Supreme Head by submission of the Clergy, by Resumption, and by Act of Parliament; and as such the power of Bishops formerly derived from *Rome* ceased, and *Henry* the Eighth after restored it anew, and setled the same by several Acts of Parliament; which *Edward* the Sixth confirmed with divers additional Acts of further benefit to them, as hath been already

already noted. But Queen *Mary* altered all by repeal of the former Laws, and so left all in Remitter, as before the alteration by *Henry* the Eighth, and did neither give or grant any jurisdiction to the Pope. Last of all comes Queen *Elizabeth*, and by repeal and resumption possessed her self of jurisdiction Ecclesiastical, and granted Election of Bishops by *Conge desire*, but never granted to the Bishops Ordinary jurisdiction by any express act, other than permission of them to continue in their former course, notwithstanding that the foundation of their jurisdiction had been altered twice, and so it will be difficult for it to hold by prescription or custom, or any other way than by a kind of Divine Right, which began to be pretended; yet to this day could never be made evident to the World. Whatever the ground was, the thing is plain, that Prelacy in Queen *Elizabeths* time had this Honour allowed thereunto, that it was upholden by Election from Ecclesiastical men, and held its jurisdiction, as from it self, and in the name of Bishop as Ordinary; and the power of Excommunication by a saving in the Statute-Law, and not by express donation; notwithstanding the late Precedent in the time of *Edward* the Sixth to the contrary.

Secondly, the Rule of this Jurisdiction was no less at large, for the Canon Law was determined by *Henry* the Eighth, and *Edward* the Sixth, and was not revived by any Act of Parliament, by Queen *Mary* or Queen *Elizabeth*, who neither pursued the *Medium* of the thirty two Commissioners, nor settled other Rule but a few Canons, which (after some time) by Queen *Elizabeth* and her Clergy were agreed upon, but never confirmed by Act of Parliament: And so could never bind the Subject, and which in general set forth a kind of form of Church-policy, yet no fashion of jurisdiction, or rule of proceedings in the Ecclesiastical Courts, but in such Cases left them to the Canon Law, which was hidden in their own breasts, and could be made strait or wide as they pleased.

Thirdly, their Censures now grew more sharp; for whereas at

at the utmoſt formerly they could do no more but impriſon, or deliver over to the Secular Power, and that only in caſe of Hereſie, and yet had ſcarce ground of Law for what they did; now they have an additional power, to fine and impriſon in Caſes of inferiour nature, and ſo can reach all that a man hath, even to his skin; nevertheleſs this was not annexed unto the ordinary Juriſdiction, but given by extraordinary Commiſſion, called the *High Commiſſion*, wherein, though many others were named, yet the Clergy and Canoniſts did the work, the reſt being but in nature of a reſerve to them, in caſe they were put to the Rout. The power of theſe Commiſſioners was to execute the Queens Juriſdiction in Cauſes Eccleſiaſtical, ſo as the Biſhops are doubly intereſted in this work; one way, by ſuppoſed Commiſſion from God, as Ordinaries within their own Dioceſs only, and ſo may proceed to Excommunication or Deprivation; the other way, by Commiſſion from the Queen, as Members of the High Commiſſion (for ſo many of them were ſuch as the Crown would pleaſe) and ſo they might fine and impriſon. They might and did, I ſay, by their Commiſſion, but not by the Statute that gives Authority thereto, and therefore cannot be ſaid to be done legally.

1 *Eliz.* c. 1.

Fourthly, beſides the contracted power of making Canons in the Convocation, by the power of the Royal Aſſent; the Queen had a power of making Laws by their conſent, in matters of the criminal part of the Worſhip of God.

This might be tolerable for the Life of one Queen, who might be preſumed, would (if ſhe lived a few years) ſettle all things; but to ſubject the conſciences of all the people to the opinion of one Metropolitan, that might opinionate ſtrange things, and that the Succeſſors of the Queen ſhould uſurp this as a Flower of the Crown, to determine what is for God's glory in ſuch caſes, and to be always altering and patching up a Form, as he and his Metropolitan, or one of them alone ſhall think meet, is neither commendable upon any grounds of Divinity or humane Policy.

1 *Eliz.* c. 2.

Now

Now amidſt the flouriſhing Eſtate of Prelacy, it's no wonder if the Churches be no Gainers, but like Plants ſpending their Natures in luxuriant branches, either are over turned by the next blaſt of wind, or do wither upon the leaſt change of Skie: That the whole ordering of the Church Affairs reſted originally in the Parliament, no man can queſtion, conſidering whatever the Queen did, or had therein, was from the power of Acts of Parliament. And that the power of Excommunication it ſelf, notwithſtanding that the Church held it by way of reſervation or ſaving, and not by donation from the Parliament, by any expreſs Act, yet was that ſaving with ſuch Limitations, as that it relieved but a lame power in compariſon of what it claimed, and exerciſed in former Times; for whereas formerly the Church-men had the Writ, *De Excommunicato Capiendo*, at their own beck; now it will not come but upon Articles and certain Conditions.

1. In caſes of Hereſie.
2. Of deſerting of the Sacrament.
3. Deſerting of publick Worſhip.
4. Maintenance of Error.
5. Incontinency.
6. Uſury.
7. Simony.
8. Perjury.
9. Idolatry.

In other matters the Spiritual Sword muſt find or make their own way, or elſe be quiet.

Secondly, the Church was now no leſs under the Chair and Throne, than under power of the Parliament; nor is it a wonder, if it could not thrive when it was ſo over-dropped: for Prelacy by the King's arms is lifted up ſo high above the other Clergy, that the reſt of the Clergy are as much underlings to the Prelacy, as the Prelates are to the King: They dare not offend the Crown, leſt they ſhould loſe their Honours, nor the inferiour Clergy them, leſt they ſhould loſe their Livings and Liberties; and ſo the Prelates

ſpeak the ſenſe of the Clergy, and make the Crown their Oracle. Thus in the Church-matters the Crown is all in all.

CHAP. XXXVII.

Of the Militia in theſe later Times.

IT cannot be denied, but as in the ſober Government of this Nation, there is a Supremacy of Command, ſo alſo in the rudeſt Times of War; and whereſoever the ſame is ſettled, there muſt the *Militia* alſo be.

The word *Militia* is a general notion, ſufficient enough for a name or title, but not to define the thing, I take it for nothing elſe, but the Government of the Common-wealth, when it is in anger, or War, or in order thereunto. It conſiſteth in the raiſing, arming, ordering and paying of the Soldiery. The Title of the Supreme Power in all this work hath been of late put to the queſtion, and brought us to this ſad condition of trial by Battail, and by Fighting, to find out who had the chief power to fight: a Leſſon that might have been learned from former Generations foregoing, at a far cheaper rate, when *England* is well in its wits. Where the Law of Peace is ſettled, there alſo is the Law of War; and in what condition the Crown ſtandeth, in relation to the Legiſlative Power, in time of Peace, may be ſeen in the foregoing Diſcourſe. In War he is the peoples General by his place; yet if any impediment do befall, either by natural Diſabilities, or civil, to render the perſon incapable of the managing of the Service, there is no queſtion but the people may order the matter as they pleaſe. Examples hereof theſe times are full, wherein we have a Child, a Virgin, and a Married Woman to ſway the Work, all of them in a very unmeet condition for ſuch a Truſt, and yet by the help they had, they managed it well enough. The power of him as King or General in the Army, is all one; but before it is imbodied, as a King only, he may do ſome things in order thereto, according

ing to the Law and Cuſtom of the Nation; yet this falls under a double conſideration of the time and occaſion. In the receſs of the Parliament, he is the firſt mover, and ought to move by the advice of his Council, if occaſion do provoke to Arms; but if the ſame befal the Parliament then ſitting, no Hiſtory or Record do mention that ever he moved but by their concurrent advice and direction. The occaſion either provoketh offenſive or defenſive War with other Nations, or with the people of his own Nation, in the caſe of Inſurrection. Examples of War with other Nations, that may be called offenſive Wars: we have but two, one in *Edward* the Sixth's time with *Scotland*, and which was but in purſuance of a War begun by his Father, and wherein the Kingdom ſtood ingaged, in a caſe that concerned the publick good and ſafety, *viz.* the Marriage of their King refuſed after promiſe made. The other was in the time of Queen *Mary* with the French, which ſomewhat reflected alſo upon the publick ſafety, but more upon the diſhonour of the ſame. In none of theſe did either of the Supreme Powers array, or raiſe men by Prerogative, but only ſuch as were Voluntier in that Work. And becauſe the people were ill principled in *Edward* the Sixth's time, in regard of the change of Religion, he was induced to hire Foraign aid out of *Germany*. The Wars in the time of Queen *Elizabeth* were in order to the defence of this Nation, being ever under a malignant Aſpect from abroad, eſpecially from *Spain*, in *Ireland*, *France*, and the *Low-Countries*; yet were theſe Wars ſerved only by Voluntiers, nor did any Commiſſion give power of impreſſing men to ſerve againſt their wills in any Expedition made to any of thoſe places, as the Commiſſions upon Record do teſtifie. If any Levies of Men were otherwiſe made, or compulſory means uſed for ſuch ends, they are to be reckoned up amongſt the *errata*, whereof the Parliament took no notice, in regard it ſaw the ends and iſſues of ſuch reflections in Goverment to be ſucceſsful and honourable, and that all was done by Council, and a Woman popularly affected, and therefore leſs feared invaſion upon their Liberties; or otherwiſe they are to be imputed to

the condition of those places, being Members of the Commonwealth; as the cautionary Towns in the *Low-Countries*, and the Irish Plantations were, and so befel under another consideration of a defensive War, in case of invasion and common danger thereby, or by intestine broils, during which condition, as it is the King's duty to levy and array men, so is it the duty of the people to be ready to assist one another in all such exigencies, and to defend the publick Liberty; nevertheless, these Arrays are not left wholly at the Will of the King, but to discretion of the Council, how far the same shall extend: For never were general Arrays made, where but one Coast was in danger, and where no conquest is in pretence, but only piracy or plunder. But if the disease were general, as in the year 88. the Array was general, and yet it was of none, but those that were of the Trained-bands, besides such as were Voluntier.

Secondly, the arming of these men was also diversly, there was no general Rule or Law for the arming of men since the time of *Edward* the First, to the time of Queen *Mary*, but the Statute at *Winton*; the course of Tenures, I mean of such men as were of the Militia of this Kingdom: So as when they were raised, they were raised in their own arms: But for such men as passed the Seas for Foraign Service, as they were Voluntiers, or sent over by the Parliament, these were armed according to special contract. But Queen *Mary* having gotten a safe reserve from *Spain* upon all adventures, and a strong Interest amongst the people, by upholding the Catholick party, made no bones to innovate in the point of arming of the Militia, although it cost the people much more than was imposed upon their Ancestors. The pattern hereof was taken from the Spanish Cabinet, the Queen, being loth to be inferiour to her own Husband, in bringing as much strength to him as he to her, and both of them willing enough to appear potent in the eyes of *France*, that then stood in competition with them both: A yoke it was, yet neither the King nor Queens Will, but the Parliament put

it

it on, and ere an age expired was cast off again: For the better understanding, see it in this Scheme.

Per Annum	*Lances*	*Light Horse.*	*Corslets*	*Bowes.*	*Hacquebuts*	*Bills.*
1000 *l.*	6	10	40	30	20	20
1000 *marks.*	4	6	30	20	10	10
400 *l.*	2	4	20	15	6	
200 *l.*	1	2	10	8	3	
100 *l.*		2	3	3	2	
100 *marks.*		1	2	2	1	
40 *l.*			2	1	2	
20 *l.*			1	1	1	
10 *l.*			*A Coat of Plate.*	1	1	
5 *l.*			*A Coat of Plate.*	1		

Goods.

1000 *marks.*	1	1	2	4	3	
400 *l.*		1	1	2	1	
200 *l.*			1	2	1	
100 *l.*			1	2		
40 *l.*			*Two Coats of Plate.*	1		1
20 *l.*			*One Coat of Plate.*	2		1
10 *l.*				1		1

The

The Lances were to be compleatly harneſſed, or the one half of them, the Corcellets furniſhed with Coats of Mail and Pikes: the Bows with an Iron Cap, and a Sheaf of Arrows. The Hackbuts with Sallets; all which was to be over and beſides ſuch Arms as men were bound unto by Tenure, or Covenant with the Landlord, or by virtue of the Statute 33 *H.* 8. *c.* 5. beſides Town-ſhips, which were charged with joynt-Arms; Annuities and Copy-holds were charged as goods. If the Arms were loſt in the Service, the owner muſt make them good again: The defaults were puniſhable with fine by the Juſtices of the Peace, who had the view, and might preſent them at the Seſſions to be proceeded upon as in other Caſes. Here is proviſion enough, yet not as the Arms of the Militia of the Kingdom, but as a Magazine in the hands of every particular man, and as his proper goods, to be imployed for the publick Service, either upon ſudden invaſion in a defenſive War, or when the Parliament ſhall ſend them abroad. And yet it is alſo a rule unto the Crown againſt arbitrary Aſſeſſments upon diſcretion, from which it cannot recede if it mean to do right. It might now very well ſtand with the Juſtice of Queen *Elizabeth*, to grant Commiſſions of Array, *Secundum formam Statutorum*, and do hurt to no man; it's true, her Commiſſions of Lord *Lieutenancy* wanted that limitation in words, yet they carried the ſenſe, for if the Crown were bound by the Law, the Lord Lieutenants were much rather, but the danger aroſe after the death of Queen *Elizabeth*; for when King *James* came to the Crown, under colour of pleaſing the people, and eaſing them of a burthen, he pleaſed himſelf more, and made the yoke upon the people much more heavy in the concluſion; for where no declared Law is, there the diſcretion of them that have the care lying upon them muſt be the Rule; and thus came the Scottiſh blood to have pretentions to a greater Prerogative than all their Predeceſſors had, upon this ſuppoſal that the Statute of Queen *Mary* took away all former Laws of that kind, and then the taking away of the Statute of Queen *Mary* takes away all declared Law as to that point: But more truly it may

may be inferred, that if all Statute Laws be taken away, then the Rule of Tenures at the Common Law must remain in force and no other. Nevertheless, this Statute of Queen *Mary*, though in force for the present, was not a general Rule for Arms in all places of this Nation; for the Marches of *Scotland* were a peculiar jurisdiction, as to this point. They stood in more constant need of Arms, than any other part of this Nation, in regard of their uncertain condition, in relation to their Neighbouring jurisdiction; and therefore were the Farms of these parts generally contracted for, upon a special reservation of Arms for each particular, which being now decayed, are again reduced by Queen *Elizabeth* to their ancient condition in the time of *Henry* the Eighth. 23 *Eliz c.9.*

A second thing which may come under this general consideration of arming, is, the arming of places, by making of Forts and Castles; which was not in the immediate determinate will of the Crown to order as it pleased, for though they may seem to be means of Peace and present safety, yet they are Symptoms of War, and in the best times are looked upon with a jealous eye, especially such as are not bordering upon the Coasts: Because that Prince that buildeth Castles within the Land is supposed to fear the Neighbourhood. This was more especially regarded in the days of *Philip* and *Mary*: For when that marriage was to be solemnized, it was one of the Articles to provide for the safety of such Forts and Castles, as then were maintained, to the end they might be preserved free from usurpation, for the Use, Profit, Strength, and Defence of the Realm; only by the natural born of the same. And afterwards when occasion was offered, for the building of more of that nature; a new power is given to King *Philip*, and Queen *Mary*, to re-edifie or make Forts and Castles, which must be executed by Commission to the ~~Legies~~ Lords for ten years, and only within the Counties bordering upon *Scotland*, and these particularly named in the Statute, so as the Crown had not power to build in all Cases, nor to any end they pleased, nor to place therein, or betrust the same to whom it would. 1 *Mar. Parl.* 2 *cap.* 2. 2 & 3 *Phil.* & *Mar. cap.* 1.

Nor

Nor yet had *Edward* the Sixth that absolute power, although not ingaged in Foraign Interests, as his Sister *Mary* was; and therefore whereas *Castellanes* had been made for life, by Pa-
2 *E. 6. c. 16.* tent, and so the absolute power of the Crown was barred in the free disposal of the same during such time. The Parliament gave the King power to remove such as were not liked, or thought not faithful to the Publick Interest, although they gave no cause of Seisure by any disloyal Act. The like also may be observed of the Ships and Ordnance; for they also do belong to the State, as the Jewels of the Crown, and therefore upon the Marriage of Queen *Mary*, they also are by Articles preserved and saved, for the use, profit, strength and defence of the Realm, by the natural born of the same.

Thirdly, as touching the ordinary of the Soldiery, the matter is not much to be insisted upon, for little doubt is to be made, but that power that raiseth them also ordereth them to the same ends that they are raised: and therefore as the sole power of the Crown doth not the one, so neither doth it the other, but in cases formerly mentioned; and yet in no case, though the War be never so absolutely defensive, and the Soldiers raised by the King's own and only Power; yet had not the King absolute Authority, and arbitrary Power, in the ordering of them when they are raised, but he must so behave himself to them, as to Free-men, according to the Laws made by themselves in their
4 & 5 *Phil. & Mar. c. 3.* Representative in Parliament, and therefore are particular Laws made to that end, against undue levying and discharging of Soldiers, and Defaults in paying of them; as also against the
2 & 3 *E. 6. c. 2.* Soldiers departing from their Service without License, or wasting their Arms, and such as wilfully absent themselves from
4 & 5 *Phil. & Mar. c. 3.* Musters; as also for the preserving the Castles, Forts, Ships and Munition for War, from being with-holden from their due use,
5 *E. 6. c. 11.* 14 *Eliz. c. 1.* or from burning or destroying.

Lastly, as touching the charge of the War, and pay of the Soldiers. It's evident, that in all offensive Wars the Soldier was paid by the Crown, although they might be said in some

ſome manner to be in order to the defence and ſafety of the Nation; nevertheleſs, where the ſame was ſo apparent to the people, it was the common courſe in theſe times to have often Parliaments, and often Subſidies, which were no leſs in a good meaſure ſatisfactory to the Crown for the Charges of the War, than Teſtimonies of the peoples good Acceptance of the Government of Affairs, and ſo accepted at their hands: The particular Records will warrant all this. For of all the Wars in theſe times (that of 88 excepted) not any of them were ever managed at the peoples charge by Contribution, but by Retribution. So were theſe times, wherein the people looking upon the Crown, as under a kind of infirmity of Childhood or Womanhood, did therefore bear a kind of compaſſionate regard thereunto, without jealouſie at Prerogative, could condeſcend and allow the Crown its full Grains, and ſomewhat more, yea, more than was meet for ſome other Prince to deſire, or the people to give up; and yet more happy were they, wherein the Crown knew no intereſt but in dependance upon the peoples good, and ſo underſtanding were rightly underſtood.

CHAP. XXXIX.

Of the Peace.

IT is but little that can be ſaid of peace in theſe times, wherein ſo little freedom was found from Foreign pretentions, and inteſtine irregularities, or both; and yet the people were never more reſolved againſt the former, nor ſecure againſt the later, and had God to Friend in all. But moſt apparently was this obſervable in the times of Queen *Elizabeth*, whoſe Government took up four parts of five of theſe times, whereof we now treat. She was a compleat Conquerour of War and Treaſon, and therein the true Inheritor of the Fate of her Grand-Father *Henry* the Seventh, with advantage, for ſhe out-faced all dangers by her only preſence, having thereof had more expe-

perience than any Princes that ever poſſeſſed her Throne; yet ſhe was wiſe enough to beware againſt the future; conſidering her condition to be the laſt of her Line; that the next behind her was rather likely to trip up her heels than ſupport her Train; that the Pope narrowly watched every opportunity; the diſtance between him and the Throne, being no greater than the breadth of her only Perſon. It may well therefore admit of excuſe, if the Statute of the 25 of *Edward* the Third concerning Treaſons did not give ſatisfaction, although therein if ſhe were ſolicitous, her Subjects were more. Some kinds of Offences were made Treaſon by Statute-Laws, which formerly appeared not ſuch, becauſe they appeared not at all; and yet in the opinion of her people, the Queen was too ſlack in the making, and more ſlack in the execution of them. The people had ingaged themſelves deeply againſt the Queen of *Scots*, and it was not ſafe for them to go back; they go yet deeper, and without any poſitive Authority, leading the way, they enter into an Aſſociation amongſt themſelves for the Queens ſafety; and it was well liked by the Queen, becauſe ſhe knew it was well meant, although by ſome it was miſtaken: neverthelefs to take away all Exception, a Law is
27 *Eliz. c.* 1. made in purſuance thereof, and ſo the Work is reduced under an ordinary rate, though the publick danger was ſuch, as might well have digeſted an extraordinary undertaking.

I intend not to enter into the particulars of theſe Treaſons of the new ſtamp, becauſe they are but temporary, and in their ultimate reach tend only to the ſafeguard of the Queens perſon, in order to the intentionary ſenſe of the Statute of 25 *Edw.* 3. although not within the explicit words of that Law. Only this is obſervable, that though the times were full of malice, yet was not all malice looked upon as fatal, nor every Expreſſion thereof Treaſon, or privity thereto Treaſon (although the Crown it ſelf was not a little concerned therein) but reduced to an inferiour degree, called *Miſpriſion*, as if they were willing rather to conſtrue undertakings for miſtakings, and thereby over-look much of the Malignity of theſe Times, than to make ſtrict inquiſition into every *Punctilio* of Offence.

As

As touching Felony, the Rules were various, some were of a new Original, as that of Gipsies; others formerly such, afterwards laid aside, are now revived with advantage, as Conjuration and Buggery: but imbezelling by Servants of their Masters Goods, made Felony for a time by *Edward* the Sixth, is by Queen *Elizabeth* made perpetual. Some Felonies are made such within a certain precinct, as Man-stealers, and other Crimes upon the Scottish Borders. Others formerly made Felony are now unmade, as that concerning Prophesies, and divers formerly protected under the refuge of Clergy, are now barred of that reserve. Such as are those that command, Counsel, or hire others to commit Petty Treason, Murder or Robbery, 4 & 5 *Phil. & Mar. cap.* 4. Stealers of Horses, Geldings or Mares, 2 *E.6. cap.*33. Robbers of Houses, Booth or Tent, by Day or Night, 5 *E. cap.9.* Pick-pockets, or Cut-purses, 8 *Eliz. cap.* 4. And Woman-stealers, 39 *Eliz. cap. 9.* And some Crimes made Felony impeachable, only within a certain time, and not upon a cool suit; so as upon the whole heap of Account, the zeal of the times will appear to be more hot, by how much iniquity appeared more hainous, and that wicked men waxed worse as the times waxed better. More particulars of this nature, and of other Offences of inferiour note might be superadded; as also of Laws, of alteration and amendment of Process and Trial, and of Common Assurance and Conveyance of Estates, of particular Revenue; all which might be insisted upon, if need were, to clear out yet further the conclusion of the whole matter, which I hasten to accomplish, led on by a natural motion, that grows in speed the nigher is comes to its end.

5 Eliz. c 20. *Cap.* 16,17. *2 Eliz. c.*29 *5 Eliz. c* 10 *Cap.* 15

CHAP. XL.

A ſummary Concluſion upon the whole matter.

IN the ſtating of this whole account; I ſhall firſt glance upon the natural conſtitution of the people of *England*, and then gather up the ſcattered Notions into one form, becauſe the one doth not a little illuſtrate the other, and ſhew the ſame to be radical, and not by any forced inoculation.

The people are of a middle temper, according to their Climate: The Northen Melancholy, and the Southern Choler, meeting in their general Conſtitution doth render them ingenious and active; which nouriſhed alſo under the wings of Liberty, inſpires a courage generous, and not ſoon out of breath. Active they are, and ſo nigh to pure act, that nothing hurts them more than much quiet; of which they had little experience, from their firſt tranſmigration till the time of King *James*; but ever were at work either in building (as before the Norman times) or after in repairing their ruines, occaſioned by tempeſtous pretenſions from *Rome* and Foraign Princes, or by Earth-quakes of Civil Contention about the Title between the two Houſes of *York* and *Lancaſter*, or intrenchments of the Crown upon the Liberty of the people. But King *James* conquering all enmity, ſpake Peace abroad, and ſang Lullaby at home; Yet like a dead calm in a hot ſpring, treaſured up in ſtore ſad diſtempers againſt a back

Winter

Winter. Their ingenuity will not allow them to be excellent at the cheat; but are rather ſubject in that kind to take than give: and ſuppoſing others as open hearted as themſelves, are many times in Treaties overmatched by them whom they overmatch in Arms. Upon the ſame account they are neither imperious over thoſe beneath, nor ſtubborn againſt them above; but can well diſcern both perſon and time. Man, Woman or Child, all is one with them, they will honour Majeſty where ever they ſee it. And of the twain, tender it more when they ſee it ſet upon infirmity: as if they knew how to command themſelves only in order to the publick good.

Nevertheleſs, they love much to be free: when they were under awe of the Pope's Curſe, they bore off deſigns by the head and ſhoulders; but afterwards, by watchfulneſs, and foreſight; and having attained a light in Religion, that will own their Liberties, of them both they make up one Garland not to be touched by any rude hand, but as if it were the bird of the eye the whole body ſtartles forthwith, the Alarm is ſoon given and taken, and whether high or low, none are ſpared that ſtand in their way. This they do owe to the Eaſtern people, from whom they fetch their Pedegree. So as the only way to conquer them, is to let them have their Liberties, for like ſome Horſes, they are good for carriage, ſo long as their burthens are eaſie and ſit looſe upon them, but if too cloſe girt, they will break all, or caſt their load, or dye. And therefore Q. *Elizabeth* gained much to the Crown by fair carriage, good words, and cleanly conveyance, which was not ſoon diſcovered, nor eaſily parted with. But *Henry* the Eighth by height of ſpirit and great noiſe, and therefore was no ſooner off the Stage, but what was gotten by the ſnatch, was loſt by the catch, and things ſoon returned into their ancient poſture again.

The firſt Government of the people before their departure out of *Germany*, was in the two States of Lords and Commons.

The

The Clergy came not into pomp and power, till *Auſtins* time, and ſoon came to the height of a third ſtate appendent to the former, and ſo continued till *Henry* the Eighth's time; then they began to decay in power, and in Queen *Elizabeths* time utterly loſt the ſame, and ſo they can no longer be called a State, although they ſtill keep ſtate.

The two States of Lords and Commons in their tranſmigration, being then in the nature of an Army of Soldiers, had a General by their Election, under whom after they had obtained a peaceable ſetling, they named anew by the name of *Konning*, or the Wiſe man, for then was Wiſdom more neceſſary than Valour. But after the Clergy had won the day, and this *Konning* had ſubmitted himſelf and his people to their Ghoſtly Father, they baptized him by a new name of *Rex*, and ſo he is ſtiled in all Written Monuments which we owe only to Eccleſiaſticks; although the vulgar held their appellation ſtill, which by contraction, or rather corruption, did at length arrive into the word *King*; a notion which as often changeth the ſenſe as the Air: ſome making the perſon all in all, others ſome in all, and ſome nothing at all but a complement of State. The Clergy gave him his Title in the firſt ſenſe, and are willing he ſhould have a power over the Eſtates, in order to their deſign, which then was to rule the King, and by him all his People, he doing what he liſteth with them, and the Clergy the like with him. The Saxons take the word in the ſecond ſenſe, for though they had put upon the Common-Wealth one Head, and on that Head one Crown, yet unto that Head did belong many eyes, and many brains; and nothing being done but by the common ſenſe, a power is left to him much like to that of the outward Members, Executory.

In time of War, how unruly ſoever the humours be, yet muſt the Law be his rule; he cannot ingage the people either to make, continue or determine, any offenſive War without their conſent; nor compel them to arm themſelves, nor command

command them out of their Counties for War, or impoſe Military charge upon them againſt their free conſent, or contrary to the known Law.

In calmer times much rather, he can neither make new Law, nor alter the old; form new Judicatories, Writs, Proceſs, Judgements, or new executions, nor inable or diſable any conveyances of Eſtates. He may ſeem poſſeſſed of more power in Church-government, yet *De jure*, can neither make nor alter Doctrine, or Worſhip, or Government in the Church: nor grant Diſpenſations, or Licenſes Eccleſiaſtical; nor Commiſſions of Juriſdiction, other than according to the Law. And as a cloſe to all, by one Oath taken at the Coronation, he not only giveth to the people ſecurity of the Peace and good behaviour, but beareth witneſs that he oweth Allegiance both to the Law and the people, different from that of the peoples in this, that the King's Allegiance is due to the Law, that is originally from the peoples Election, but the peoples to the King, under a Law of their own framing.

This leadeth on the conſideration of a higher degree of power than that of Kings: For though Law as touching morality in the general be of Heavenly birth; yet the poſitive Laws ariſing from common Prudence concerning the Honour, Peace and Profit of every Nation, are formed by humane conſtitution, and are therefore called *Honeſta*, or *juſta*, becauſe by common vote they are ſo eſteemed, and not becauſe any one man ſuppoſeth them to be ſuch. The words of the Summons to the Parliament doth hold for this, *Quæ de communi conſilio ordinari contigerint*, and the words in the Coronation Oath, *Quos vulgus elegerit*, do ſpeak no leſs, whether they be taken in the Preterperfect tenſe, or Future tenſe, the concluſion will be the ſame: True it is that in all, Kings are ſuppoſed as preſent; yet is not that valuable in the point of Council, which is the foundation of the poſitive Law. For as the beſt things under heaven are ſubject to infirmity; ſo Kings either ſhort or beyond in Age or Wit, or poſſibly given over to their luſts, or ſick, or abſent, (in all which the name of a King adds little more to the Law than a

ſound

found) yet all the while the Government is maintained with as much Honour and Power, as under the most wise and well disposed King that ever blessed Throne.

This is done in the convention of States, which in the first times consisted of Individuals, rather than Specificals. The great men doubtless did many things even before they saw the English shore; that *Tacitus* noteth; yet in the publick convention of all, did nothing alone till of one House they became two. The particular time of the separation is uncertain, and the occasion more: It may be the great Lords thought the mysteries of State too sacred to be debated before the vulgar, lest they should grow into curiosity: Possibly also might the Commons in their debates wish the great men absent, that themselves might more freely vote without angering their great Lords: Nevertheless, the Royal assent is ever given in the joynt convention of all, but how a double Negative should rest in the House of Lords, one originally in themselves, the other in the sole person of the King, when as in no case is any Negative found upon Record, but a modest waving the answer of such things, as the King likes not, is to me a mystery, if it be not cleared by usurpation: For it is beyond reach, why that which is once by the Representative of the people determined to be *Honestum*, should be dis-determined by one or a few, whose Counsels are for the most part but Notionary, and grounded upon private inconveniences, and not upon experimentals of most publick concernment; or that the *veult* or *Soit fait*, which formerly held the room only of a *Manifesto* of the regal will to execute the Law then made (as his Coronation Oath to execute all Laws formerly established) should not be taken to be a determination of the justness or honesty of the thing: When as this Royal assent is many times given by a King, that knows no difference between good and evil, and is never competent Judge in matters that in his opinion do fall into contradiction between his own private interest, and the benefit of the people.

However

However unequal it may ſeem, yet both that and other advantages were gained by the Houſe of Lords, after the ſeparation was once made, as many of the Ancient Statutes (by them only made) do ſufficiently hold forth, which although in the general do concern matters of Judicature, wherein the Lords originally had the greateſt ſhare, yet other things alſo eſcaped the Common Vote, which in after ages they recovered into their conſideration again. And the condition of the people in thoſe times did principally conduce hereunto: For until the Norman times were ſomewhat ſettled, the former ages had ever been uncertain, in the changes between War and Peace, which maintained the diſtance between the Lords and their Tenants, and the Authority of the one over the other, ſavouring of the more abſolute command in Law. And after that the Sword was turned into the plough-ſhare, the diſtance is eſtabliſhed by compact of Tenure by Service, under peril of default, although in a different degree; for the Service of a Knight, as more eminent in War, ſo in Peace it raiſed the mind to regard of publick Peace: but the Service of the Plough ſupporting all, is underneath all, yet ſtill under the Common Condition of Free-men equally as the Knight. Peace now had ſcarcely exceeded its minority before it brought forth the unhappy birth of Ambition; Kings would be more abſolute, and Lords more Lordly; the Commons left far behind ſeldom come into mention amongſt the publick Acts of State, and as uſeleſs ſet aſide: this was the loweſt ebb that ever the Commonage of *England* indured, which continued till Ambition brought on Contention amongſt the great men, and thence the Barons Wars, wherein the Commons parting aſunder, ſome holding for the King, who promiſed them Liberty from their Lords; others ſiding with the Lords, who promiſed them Liberty from the King; they became ſo minded of their Liberties, that in the Concluſion they come off upon better advantage for their Liberties, than either King or Lords, who all were loſers before their reckoning was fully made. Theſe Wars had by experience made the King ſenſible of the ſmart of the Lords great intereſt with the people, and pointed

him to the pin upon which the ſame did hang; to take which away, a Deſign is contrived to advance the value of the Commoners, and to level the Peerage, that they both may draw in one equal yoke the Chariot of Prerogative. The Power of the Commons in publick Councils was of ſome efficacy but not much Honour, for their meetings were tumultuary; time brought forth a cure hereof; the flowers of the people are by Election ſent to the Repreſentative, and ſo the Lords are matched, if not over-matched, the people leſs admiring the Lords, and more regarding themſelves. This was but a dazle, an Eclipſe enſues; for Kings having duely eyed the Nature of Tenure between the Lords and Commons, look upon it as an out-work or block-houſe in their way of approach: Their next endeavour is therefore to gain the Knighthood of *England* within the compaſs of their own Fee, and ſo by priority to have their Service, as often as need ſhould require, by a trick in Law; as well for their own ſafety in time of War, as for their benefit in time of Peace: This was a work of a continuing Nature, and commended to Succeſſors to accompliſh by degrees, that the whole Knighthood of *England* is become no more the Lords till Kings be firſt ſerved: And thus the power of the people is wholly devolved into the King's Command, and the Lords muſt now ſtand alone, having no other foundation than the affections of the people gained by beneficence of Neighbourhood, and ordinary ſociety, which commonly ingratiates the inferiour rank of men to thoſe of higher degree, eſpecially ſuch of them as affect to be popular. *Henry* the Seventh found out this ſore, and taught his Succeſſors the way to avoid that occaſion of Jealouſie, by calling up ſuch conſiderable men to attend the Court, without other Wages but fruitleſs hopes; or under colour of Honour to be had by Kings from the preſence of ſuch great men, in their great Trains; or of other Service of ſpecial note to be done only by men of ſo high accompliſhment. And by this means Lordſhip, once bringing therewith both Authority and Power unto Kings, before Kings grew jealous of their greatneſs, in theſe later days is become a meer jelly, and neither able to ſerve the intereſt of Kings (if the people ſhould

ſhould beſtir themſelves) nor their own any longer: Henceforth the Commons of *England* are no mean Perſons, and their Repreſentative of ſuch Concernment, as if Kings will have them to obſerve him, he muſt ſerve them with their Liberties and Laws; and every one the publick good of the people: No man's work is beneath, no man's above it, the beſt Honour of the King's work is to be, *Nobilis ſervitus* (as *Antigonus* ſaid to his Son) or in plain Engliſh, Supreme Service above all and to the whole. I now conclude, wiſhing we may attain the happineſs of our Fore-Fathers the ancient Saxons, *Quilibet contentus ſorte propria.*

Ælian lib. 2. Var. hiſt. cap. 20.

Tacit.

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